

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

- - - - - X  
BYRON GEOVANNY AREVALO : 21-CV-5236(PKC)(SJB)  
FAJARDO, et al., :  
 :  
Plaintiffs, :  
 : United States Courthouse  
 : Brooklyn, New York  
-against- :  
 :  
WB MAINTENANCE & DESIGN : Monday, December 20, 2021  
GROUP, INC., et al. : 10:00 a.m.  
 :  
Defendants. :  
- - - - - X

TRANSCRIPT OF  
CIVIL CAUSE FOR PRELIMINARY INJUNCTION HEARING  
BEFORE THE HONORABLE PAMELA K. CHEN  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

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1 (In open court.)

2 COURTRROOM DEPUTY: All rise. The United States  
3 District Court for the Eastern District of New York is now  
4 in session. The Honorable Pamela K. Chen is now presiding.

5 (Honorable Pamela K. Chen takes the bench.)

6 COURTRROOM DEPUTY: Calling civil cause for  
7 preliminary injunction hearing in Docket No. 21-CV-5236,  
8 *Byron Geovanny Arevalo Fajardo against WB Maintenance &*  
9 *Design Group, Inc..*

10 Counsel, please note your appearances for the  
11 record.

12 MR. MIZRAHI: For the plaintiff, Byron Geovanny  
13 Arevalo Fajardo, Levin-Epstein & Associates, P.C. by Jason  
14 Mizrahi.

15 Good morning, Your Honor.

16 MR. SIEGLER: For the defendant, WB Maintenance &  
17 Design Group, Inc., Koutsoudakis & Iakovou Law Group, PLLC  
18 by Steven Siegler.

19 Good morning, Your Honor.

20 COURTRROOM DEPUTY: We are here for civil cause for  
21 preliminary injunction hearing 21-CV-5236, Arevalo Fajardo  
22 WB Maintenance & Design Group.

23 State your appearances for the record starting  
24 with plaintiff.

25 MR. MIZRAHI: Good morning, your Honor, my name is

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1 Jason Mizrahi from Levin-Epstein & Associates, P.C., counsel  
2 for the plaintiffs. Joined with me this morning is my  
3 client Carlos Martell.

4 THE WITNESS: My name is Carlos Martell.

5 THE COURT: Good morning to both of you.

6 THE WITNESS: Good morning.

7 THE COURT: For the defense.

8 MR. SIEGLER: Steven Siegler here today on behalf  
9 of the corporate defendants and the individual defendants.

10 THE COURT: Okay. Let's do this. Let's have you  
11 moved up to the front of the table so I could see you a  
12 little bit. And then I want to ask everyone to make sure  
13 you use the microphones because, especially with the masks,  
14 it's quite difficult to hear you.

15 Mr. Martell, there's a closer one. Let's see if  
16 it reaches you. There you go. Just make sure you use that  
17 although. I think, ultimately, you're going to end up here  
18 in the witness box.

19 So we're here today for a hearing, and perhaps an  
20 evidentiary hearing, I think, in connection with the request  
21 for a preliminary injunction by the plaintiffs.

22 The way we're going to proceed is I do have a  
23 couple of preliminary questions for the parties, but I think  
24 the purpose, and the main purpose is for me, to hear today  
25 from Mr. Martell or any other witnesses that either side

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1 has.

2 Now, Mr. Siegler, you seem to be sit ago lone, so  
3 I'm assuming alone that the defendants are not putting any  
4 witnesses; is that right?

5 MR. SIEGLER: We had our witness testify by  
6 affidavit.

7 THE COURT: Okay. So you're going to rely on your  
8 affidavits?

9 MR. SIEGLER: Yes. And I would ask that  
10 Mr. Martell rely on his affidavit as well.

11 THE COURT: Well, no, I actually want to hear from  
12 someone, if possible. Obviously, I had the discretion to  
13 rely on whatever evidence seemed sufficient or competent.  
14 But, certainly, since Mr. Martell is willing to testify and  
15 you can cross-examine him.

16 MR. SIEGLER: Yes.

17 THE COURT: I'd like to hear from him because my  
18 preliminary question to you is going to be that it seems to  
19 me that were the basis for your opposition, or your client's  
20 opposition to the motion, is a purely factual one. In other  
21 words, defendants are disputing the facts upon which the  
22 plaintiffs rely in seeking this preliminary injunction.

23 It seems to me that if I find by a preponderance  
24 that the plaintiffs have proved the facts that they alleged  
25 which could support a finding of retaliation by the

1 defendant in connection with this lawsuit that an injunction  
2 might be appropriate or actually would be appropriate.

3 So am I correct in terms of characterizing the  
4 defendant's opposition as being really a factual one? You  
5 claim that what the plaintiffs allege happened didn't happen  
6 or hasn't happened.

7 MR. SIEGLER: Well, there's two issues. One is an  
8 altercation with Mr. Alex Briceno who is not here today, who  
9 I don't represent, who the Court can't issue an injunction  
10 against because he hasn't been given due process. I'm not  
11 sure what steps the plaintiff did to secure his appearance  
12 today, but I don't represent him. I never represented him.

13 THE COURT: Right.

14 MR. SIEGLER: So that's one issue. Leaving aside  
15 the altercation, which did not involve any of the individual  
16 defendants, I think that's a factual issue that involved  
17 this non-party, Mr. Briceno. The issue of the deportation,  
18 or the threats of deportation, is certainly a factual issue  
19 that your Honor has to determine. There's been no evidence  
20 other than a bald, conclusory statement that it happened. I  
21 would like to hear from Mr. Martell about that, I guess.

22 And I'll say just briefly, your Honor, if he's  
23 going to supplement his affidavit, I think that would be  
24 highly prejudicial to the defendants because we haven't had  
25 time to look at his affidavit, this new testimony. In other

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1 words, he supplements and adds new facts, my client won't  
2 have a chance to respond by affidavit to those new facts. I  
3 would like him to stick to his affidavit, and I can  
4 cross-examine on his affidavit, because that's the evidence  
5 before your Honor.

6 THE COURT: All right. Well, again, let me go  
7 back to the question I asked first and then I'll address  
8 what you raised.

9 I do understand your argument regarding due  
10 process for Alex Briceno who is not yet a party in this  
11 matter, although, as you know, and you don't represent Alex  
12 Briceno, the plaintiffs are moving to amend Alex Briceno as  
13 a defendant based on what they allege happened since the  
14 filing of this case. So I think that the procedural hurdle  
15 or legitimate one that you can raise based on the outcome of  
16 the amendment.

17 In other words, if Mr. Briceno -- or if I allow  
18 plaintiffs to amend or accept their amended complaint,  
19 Mr. Briceno will be a defendant and he can reopen the  
20 question about a preliminary injunction or perhaps  
21 procedurally what I'll do potentially or could do is to  
22 allow the amendment first and then we revisit the question  
23 about a preliminary injunction at which he can then register  
24 any complaint or oppose, or obviously, seek due process with  
25 regard to that -- those allegations as to him.

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1 But again, my question is to you is: Assume for  
2 the moment there is this, there is an allegation not only  
3 that Alex Briceno assaulted Mr. Martell but that your  
4 clients, and you should probably tell me how to pronounce.

5 MR. SIEGLER: Jeissy.

6 THE COURT: Jeissy.

7 MR. SIEGLER: Wladimir is the father, Betty is the  
8 mother. Jeimy is one of the sisters and Jeissy is the  
9 sister who witnessed the aftermath of the altercation.

10 THE COURT: Okay. So the question is: Is that if  
11 I find that Alex Briceno assaulted Mr. Martell as claimed at  
12 the urging of, or in conspiracy with, or coordination with  
13 Jeissy Briceno who is one of the defendants, would an  
14 injunction be appropriate to prevent any further -- and,  
15 again, this is assuming I find that some retaliation has  
16 occurred -- to prevent any further retaliation, harassment,  
17 or intimidation in connection with this case. Is this not  
18 just a factual dispute as to your client?

19 MR. SIEGLER: There is only one client of mine  
20 that was present that night. There has been no allegation,  
21 no hint of an allegation that the father, the elderly  
22 father, was there or did anything; or the elderly mother was  
23 there or did anything. I make that argument, I think it is  
24 a legal argument, that the preliminary injunction that's  
25 being sought is overbroad. It's against all of the

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1 defendants for every -- and their employees and agents and  
2 representatives and possibly their attorneys, right? Not  
3 that I have any interest in harassing Mr. Martell.

4           So if you were to find, for instance, that Jeissy  
5 despite her text message which clearly doesn't say, Come  
6 down to beat this guy up because of the lawsuit. It says  
7 this guy is here and is freaking me out in so many words.  
8 Then, yes, I guess your Honor could enter some kind of an  
9 injunction against her personally one of the defendants but  
10 not all.

11           THE COURT: Okay. Did you want to add anything  
12 before I hear from Mr. Martell, Mr. Mizrahi?

13           MR. MIZRAHI: I think your Honor is aware of the  
14 facts at this point and I don't want to take up any more of  
15 the Court's time than is needed to just go over the issue.

16           But, your Honor, the circumstances here are dire.  
17 Obviously, the granting of a preliminary injunction is not  
18 something that is done liberally. We are here in court  
19 physically which speaks volumes, and although that the legal  
20 threshold for the granting of a preliminary injunction does  
21 require, you know, the Court to really balance the legal  
22 fundamental issues, the factual issues here are very simple.

23           There are three factual predicates here that  
24 really apply, none of which seem to be really in dispute.

25           Number one, Alexander Briceno has made verbal



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1 threats to report certain plaintiffs to the INS.

2 THE COURT: Hang on a second. That I don't think  
3 you can characterize as undisputed. I think the problem is  
4 there hasn't been any specificity as to who, when, what was  
5 said, et cetera. So I actually do want to hear from  
6 plaintiffs about that. I think it's curious and a bit  
7 confounding procedurally. And on this I agree to some  
8 extent with the defense about. It it's hard to defend  
9 against vague allegations or a nonspecific allegations of  
10 threatening to go to immigration authorities. Throughout  
11 your briefing, it's never been articulated or specified.

12 MR. MIZRAHI: For good reason, your Honor. For  
13 good reason. Number one, the evidentiary threshold that  
14 applies to preliminary injunctions is different from the  
15 evidentiary threshold that may apply at summary judgment or  
16 at trial. There's case law in our reply memo of law which  
17 I'm happy to cite to.

18 THE COURT: Hang on a second. I understand the  
19 hearsay aspect of it, but you cannot ask for preliminary  
20 relief based on some general notion that -- or some general  
21 complaint or conclusory complaint that there's been these  
22 threats by a non-party. And then, basically prevent -- or  
23 that prevent the defense from defending against them. How  
24 do they defend against nonspecific threats about going to  
25 immigration?

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1 MR. MIZRAHI: The due process argument is  
2 something that, you know, is -- seems like a lawyer's  
3 contrivance without any casting any aspersions. Alex was  
4 aware of this case. Alex turned himself into the  
5 authorities voluntarily after the filing of the preliminary  
6 injunction. Alex --

7 THE COURT: Wait. In connection with the assault.

8 MR. MIZRAHI: In connection with the assault.

9 THE COURT: He was arrested is what I understood.

10 MR. MIZRAHI: He was arrested after he had turned  
11 himself in voluntarily. So he was already aware of the  
12 circumstances surrounding the preliminary injunction, he was  
13 already aware of the circumstances surrounding this case.  
14 This is not a due process issue.

15 THE COURT: Yes.

16 MR. MIZRAHI: If Alex had wanted to --

17 THE COURT: Hold on a second.

18 But you're asking that the defendants, who don't  
19 right now include Alex Briceno, also be enjoined from making  
20 threats of deportation or anything else so let's talk about  
21 that. Why can't you tell me or why should I accept your  
22 vague representation that Alex Briceno, on behalf of the  
23 other defendants, purportedly has been making threats to  
24 report individuals to INS.

25 MR. MIZRAHI: Your Honor is correct in trying to

1 get as much information surrounding this issue as the Court  
2 can. And as I had previously mentioned, there's good reason  
3 why we haven't provided as much specificity as we otherwise  
4 would have.

5 Number one, I had previously mentioned that the  
6 rules surrounding hearsay are somewhat lenient surrounding a  
7 preliminary injunction as though otherwise are for a summary  
8 judgment and trial.

9 Number two --

10 THE COURT: Hang on, I don't accept your  
11 explanation because that's a different issue, that's the  
12 form or the manner in presentation, I accept that.

13 Mr. Martell, I might, although it affects the  
14 weight, give me the information that others have told him,  
15 fine. But the question is: Why not be specific? So  
16 address what your good reason is for not specifying or  
17 giving details about these allege the threats.

18 MR. MIZRAHI: Given the sensitivity, and given the  
19 real threat to these individuals' immigration statuses, we  
20 haven't provided their names. We have them, we can provide  
21 them to the Court, we haven't done it so far just because of  
22 how sensitive of an issue it is of these people are fearing  
23 for their safety.

24 THE COURT: But, okay. Let's break that down a  
25 bit.

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1 I certainly understand why you might not say this  
2 person fears the threat because, in fact, they are here  
3 illegally or work illegally. I understand that you don't  
4 want to make an admission of that sort. But that doesn't  
5 speak to why or doesn't explain why you haven't said here  
6 are the threats that are being made because, in theory, if  
7 your allegation is true that defendants know who they're  
8 threatening and how they threatened them.

9 So the fact that you're not telling me who is  
10 threatened or how that person was threatened and who they  
11 were threatened by, and when that happened isn't explained.  
12 And the fact that there are sensitivities because the  
13 defendants are already doing this.

14 Hang on.

15 You don't have to, and I'm never going to require  
16 you to have the plaintiffs make an admission about their own  
17 immigration status or whether or not the threat is potent.  
18 The point is to could be a false report. In other words,  
19 the idea is you go there and without any basis report  
20 someone as working illegally. So I can control and I would  
21 control the amount of information that could be  
22 incriminating against the complaining witnesses or  
23 plaintiffs, but that doesn't alleviate the burden that you  
24 have to at least to identify for my sake and for the  
25 defendant's sake. They have a right to know what the

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1 allegation is, the who, what, where, when, and how I should  
2 say.

3 MR. MIZRAHI: We certainly have that information,  
4 your Honor. We can provide the Court with that information.  
5 We can provided it to defendants. To the extent it's  
6 needed, we have it. We're willing to provide it.

7 THE COURT: To who? To me and the defense?

8 MR. MIZRAHI: Yes. The only reason we haven't so  
9 far is given the sensitivity of the issue.

10 MR. SIEGLER: I'm sorry, your Honor, this doesn't  
11 sound right. Let's go back. This is an attorney, no  
12 offense, initially applied for this injunction without  
13 anything. Without any affidavit, right? Right? We had to  
14 then -- I sent a letter to your Honor. Your Honor said,  
15 Please submit an affidavit he submitted an affidavit.

16 THE COURT: Folks, we have a court reporter  
17 everyone you have to slow down and use the microphone, pull  
18 it closer.

19 MR. SIEGLER: I'm sorry.

20 In the first place, there was no affidavit. He  
21 simply applied for this thing without any evidence. Then  
22 when I called him on it, or when your Honor called him on  
23 it, he submitted an affidavit. The first affidavit said  
24 defendants, plural, all the defendants made threats. That  
25 was the December 6th affidavit. The December 9th affidavit

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1 he says it's Alex only. This story has changed so many  
2 times, your Honor. And for counsel to sit there and  
3 seriously suggest when we're here at the hearing today,  
4 today is the day. That some time later, he might provide or  
5 he can provide. I think that's not appropriate.

6 THE COURT: Already. Go ahead Mr. Mizrahi.

7 MR. MIZRAHI: We're willing to provide it today.

8 Number two, the fact that Alex Briceno picked up  
9 the phone and called a former employee of his father's  
10 construction company who hadn't work there for over five,  
11 six, seven, eight years speaks volumes. Why would he ever  
12 have a reason to contact this individual. And, of course,  
13 this individual received a -- where we can speak to the  
14 specifics of the phone call -- but the fact that they're not  
15 even disputing that this, you know, son of the boss.

16 THE COURT: That's a problem. Hang on. The  
17 problem is they can't dispute the purported threats to  
18 report individuals to INS because you haven't told them what  
19 they are. I guess they could blanketly say I've never  
20 threatened to tell INS about somebody but, again, you're  
21 only alleging Alex Briceno and this lawyer doesn't represent  
22 him yet.

23 MR. SIEGLER: And won't.

24 MR. MIZRAHI: There are three factual predicates,  
25 your Honor, with respect to the immigration-related threats,

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1 we believe they're straightforward enough that they either  
2 happened or didn't happen.

3 With respect to the second threat there was a  
4 physical assault on Carlos Martell.

5 THE COURT: Of course, that we're going to address  
6 today but I think you and I may not be communicating. You  
7 say they're straightforward enough. I have no idea what  
8 you're talking about because you've never told me when or  
9 where or any details. They may well be straightforward but  
10 when you say, as you just did now, that there was someone  
11 who used to work for maybe Alex Briceno, that Alex Briceno  
12 contacted, I'm not sure that's particularly straightforward  
13 with respect to this lawsuit since it sounds like neither of  
14 those individuals is involved in this lawsuit.

15 MR. MIZRAHI: Let me clarify, your Honor.

16 THE COURT: Please.

17 MR. MIZRAHI: The 12 plaintiffs that filed this  
18 lawsuit, of the 12 plaintiffs, the majority of these  
19 individuals hadn't worked for the company for over three or  
20 four years.

21 THE COURT: Okay. How many of them hadn't?

22 MR. MIZRAHI: There's a footnote in your reply  
23 memorandum of law that breaks down the exact periods of time  
24 of time. I can find that footnote if you'd like.

25 THE COURT: That's all right.

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1 MR. MIZRAHI: But I'm referring to Page 10 of  
2 plaintiff's reply memorandum of law, Footnotes 20 through  
3 22.

4 THE COURT: All right.

5 MR. MIZRAHI: So there is categories of  
6 plaintiffs. They filed a lawsuit against the construction  
7 company. The lawsuit was filed in September. After filing  
8 the lawsuit, two of these individual plaintiffs had received  
9 unsolicited phone calls from Wladimir Briceno's son Alex.  
10 Alex picked up the phone. He called two of these  
11 individuals and informed them in substance. He said, If you  
12 don't drop the lawsuit, I'm going to report you to the INS.  
13 Why would he ever had a reason to pick up the phone to call  
14 a plaintiff who worked for his father, who hadn't worked for  
15 him for over nearly three years, you know, this is unusual.  
16 That's number one.

17 THE COURT: Let's back up for a moment. I'm  
18 looking at the paragraph to which you refer which is in your  
19 reply. It's really not the place to first articulate what  
20 the alleged threat is but I don't see, and forgive me if I  
21 missed it, what you just said which is that Alex Briceno  
22 contacted them and said I'm going to report you to INS.

23 MR. MIZRAHI: I'm referring, your Honor, to Page  
24 10 of the reply simply to provide the Court with the  
25 information concerning how long these individuals have been



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1 out of work.

2 THE COURT: Right. But in any of the briefing did  
3 you say -- do you state what you just said now that Alex  
4 Briceno called, and then each of these individuals you  
5 identified, and said, I'm going to report you to INS.

6 MR. MIZRAHI: Your Honor, we're prepared to do it  
7 today. We understand there is an evidentiary hearing  
8 scheduled today and my client is prepared to speak on it  
9 today.

10 THE COURT: All right. I do want to hear about  
11 that.

12 Now, I'll address as appropriate after I hear the  
13 evidence this argument the defense makes about not having  
14 sufficient notice and there being some kind of a due process  
15 problem with just now notifying me about or then rather  
16 about the exact nature of these threats of deportation.

17 Hang on.

18 The other question I want to ask you, though, is  
19 what evidence do you have that Alex Briceno is acting on  
20 behalf of the current defendants? Is it only because why  
21 else would he be doing it now? Sort of a temporal inference  
22 you want me to make it?

23 MR. MIZRAHI: Your Honor, the evidence is  
24 overwhelming. There is direct evidence as identified in  
25 admissions in defendant's affidavit in support of their

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1 opposition consisting of text messages between Jeissy  
2 Briceno and Alex Briceno.

3 THE COURT: On December 2nd.

4 MR. MIZRAHI: On December 2nd.

5 THE COURT: What do you think is an admission?  
6 She claims that she texted her brother because Mr. Martell  
7 was in the same laundromat as Jeissy and was shaking and  
8 that's reflected in this text as well. And looked like, and  
9 this is her characterization, he might be on drugs, I guess.  
10 And that he was doing his laundry, meaning, Mr. Martell was  
11 doing his laundry next to Jeissy and her boyfriend.

12 MR. MIZRAHI: Well, correct me if I'm wrong. I  
13 believe the following facts are undisputed. The lawsuit was  
14 filed on September 2021.

15 THE COURT: Right.

16 MR. MIZRAHI: After the lawsuit was filed on  
17 September 2021, Jeissy Briceno saw Carlos Martell at a  
18 laundromat in Woodside, Queens.

19 THE WITNESS: Right.

20 MR. MIZRAHI: Within minutes of seeing Carlos  
21 Martell at a laundromat in Woodside, Queens Jeissy Briceno  
22 contacted her brother Alex.

23 THE COURT: Right.

24 MR. MIZRAHI: Within her affidavit, Jeissy Briceno  
25 admits that Alex and Carlos may have some animus. Alex may

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1 have some animus.

2 THE COURT: They were yelling at each other.

3 MR. MIZRAHI: No, no. There is something in the  
4 affidavit that says Alex has some animus towards Carlos  
5 Martell.

6 THE COURT: Relating to a woman.

7 MR. MIZRAHI: Something about that. There's some  
8 animus there.

9 THE COURT: Okay.

10 MR. MIZRAHI: Within minutes after she had  
11 contacted her brother, her brother physically assaults, you  
12 know, assaults and batters Carlos Martell.

13 THE COURT: You say it's undisputed. Mr. Martell  
14 says it, the defense does not. All she says, Jeissy  
15 Briceno, is that she didn't see a fight. So I don't know if  
16 you want to call it "undisputed." Yes, there's no contrary  
17 evidence that there was no fight. All we have is a  
18 statement by Jeissy Briceno that she did not see a fight.

19 MR. MIZRAHI: There is also no contrary evidence  
20 to the verbal threats that were communicated so.

21 THE COURT: You say that again, yes.

22 MR. MIZRAHI: She says that she didn't witness a  
23 fight, but our affidavit clearly states that there were, you  
24 know, three verbal threats communicated during the  
25 altercation.

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1 THE COURT: Okay.

2 MR. MIZRAHI: Two from Alex, one from Jeissy, and,  
3 you know, Jeissy doesn't offer anything in response to that  
4 allegation. She's silent as to that allegation.

5 THE COURT: But, again, your argument is the  
6 timing and the circumstances you think support an inference  
7 that the reason behind the assault was to teach Mr. Martell  
8 and anyone else a lesson with respect to bringing this  
9 lawsuit.

10 MR. MIZRAHI: Yes.

11 THE COURT: Okay. I did want to ask that of you,  
12 Mr. Siegler, because the plaintiffs make the argument that  
13 there are these undisputed facts. By undisputed, it's  
14 sometimes the silence as to those particular facts in Jeissy  
15 Briceno's and defendant's response to which the plaintiffs  
16 are referring.

17 So I do want to clarify: Do the defendants  
18 dispute that they had actual knowledge of this lawsuit prior  
19 to December 2, 2021, and it could be as early as  
20 September 2021 when the lawsuit was filed or October 12,  
21 2021, when the complaint was served, or even November 2021  
22 when the answers were filed? Is there any dispute that your  
23 clients were air a wear of the lawsuit before December 2,  
24 2021.

25 MR. SIEGLER: They knew about it. I can't speak

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1 for Alex because he's not here when he knew to about it.

2 THE COURT: But does your clients? Just speak  
3 your clients.

4 MR. SIEGLER: My clients knew about it. They  
5 hired a lawyer.

6 THE COURT: Now, is there any dispute from your  
7 clients regarding Alex Briceno threatening to report the  
8 plaintiffs to the INS, or are your clients going to take the  
9 position they have no idea. I mean, what is their position  
10 on this?

11 MR. SIEGLER: Their position is all four of the  
12 defendants: Mom, dad, and the two sisters made absolutely  
13 no threats to anybody especially about deportation given the  
14 fact that Mr. Martell here is illegally and a lot of the  
15 other plaintiffs are here illegally as far as she knows.

16 THE COURT: The four named defendant say they  
17 never personally made any threats to any plaintiffs about  
18 reporting them to INS.

19 MR. SIEGLER: Or asked anybody to act on their  
20 behalf to do that.

21 THE COURT: That's the question. Do they further  
22 say that they never asked Alex Briceno to do that?

23 MR. SIEGLER: Exactly. They never asked him to do  
24 that. Jeissy was as surprised as anybody when her brother  
25 showed up and this altercation occurred.

1 THE COURT: One thing at a time. Is it further  
2 the defense's position that they were unaware with of Alex  
3 Briceno allegedly making these threats of going to INS?

4 MR. SIEGLER: If it happened, yes, they're unaware  
5 of it.

6 THE COURT: All right. Can I ask you a question,  
7 though? Is there any reason why that's not in an affidavit?  
8 I don't want to delve into strategy, but since that's at the  
9 heart of the plaintiff's factual allegations why isn't  
10 anything in Jeissy Briceno's -- why isn't there anything  
11 from any affidavit from any of the defendants about not  
12 making threats of deportation and not being aware of any  
13 such threats being made or getting anyone to make them.

14 MR. SIEGLER: Your Honor, the allegations were so  
15 vague and so conclusory without a shred of detail. It is  
16 and it was impossible to address that in any serious way.  
17 It's like saying, you know, you know, Jason Mizrahi  
18 committed murder. It's fanciful. So what we did instead,  
19 your Honor, was Jeissy's affidavit we attached her text  
20 messages from that evening and the text messages speak for  
21 themselves. She didn't say, Come down here right away and  
22 assault this person because of a Fair Labor Standards Act  
23 lawsuit. There's nothing mentioned about the lawsuit, and I  
24 think that that text -- and in discovery we'll get the  
25 whole, you know, more or less thread if there's more to it.

1 I don't think there's more. We thought that addressed it.

2 I didn't feel as the attorney that Wladimir, the  
3 mom, the dad, these are older people in their 70s, come on,  
4 I just didn't need to address this allegation.

5 THE COURT: Well, I mean, on the one hand, you're  
6 complaining about process. On the other, you didn't, in my  
7 opinion, do as much as you could to at least dispel the  
8 factual allegations you think are false. You say it was  
9 fanciful but -- and perhaps difficult -- because there's no  
10 specificity with respect to these threats of deportation.  
11 But you could clearly have submitted affidavits from each of  
12 the defendants simply saying, "We have never," or, "I have  
13 never threatened" to report any employees or the plaintiffs  
14 to INS. Nor have I asked anyone else to do it, nor was I  
15 aware that anyone did so.

16 MR. SIEGLER: Bear in mind, your Honor, that when  
17 the Temporary Restraining Order was sought, Mr. Martel's  
18 affidavit, I mentioned this before, said defendants made  
19 threats. On December 9th, after the Temporary Restraining  
20 Order was in place in support of this application, she says,  
21 Alex Briceno did it. So I didn't feel, and I read that very  
22 carefully, and I think that's a significant difference. I  
23 didn't feel that he was accusing my clients of engaging in  
24 that behavior. He said simply -- he says multiple times,  
25 Alex is at the center of it. Alex made the threat and even

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1 the proffer that counsel made this morning, I prefer to have  
2 a witness, but counsel made a proffer about Alex.

3 So since Alex is not my client, I don't represent  
4 Alex, I don't want to represent Alex. Alex has his own  
5 attorney, or should have his own phone for this, I know he  
6 has a criminal attorney. I didn't feel like it was  
7 necessary to my clients to put facts on the record.

8 THE COURT: Let me ask you. Are your clients  
9 willing to sign affidavits simply stating, I've never asked  
10 anybody to threaten any of my employees or former employees  
11 including the plaintiffs or however you want to word it with  
12 going to INS regarding deportation. Remember, this comes  
13 down to facts and I have only your representation right now.  
14 I understand, although I don't quite agree with the  
15 strategy, that you used in terms of just not responding to  
16 the allegations that were set forth in the January, I'm  
17 sorry, December 9th motion papers by plaintiff. But the  
18 question is: Can you produce such affidavits from your  
19 clients in order to at least balance out the factual record  
20 are sworn statements disclaiming any involvement in this.

21 MR. SIEGLER: If there is a factual  
22 allegation -- factual record with specifics, we're happy to.  
23 Do you want a blanket "I never did this," I don't see a  
24 problem with that. I've talked to my clients.

25 THE COURT: Okay. Well, I'm going to get that



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1 from Mr. Martell today under oath. I want to hear what the  
2 specifics are as to these threats.

3 MR. MIZRAHI: We're prepared to speak on them,  
4 your Honor.

5 Just to summarize what we have so far. There are  
6 three factual predicates underlying the emergency relief  
7 sought. There are the verbal threats targeted to the  
8 certain individual plaintiffs' immigration statuses.

9 Number two, there's the physical assault on Carlos  
10 Martell. Number three, the threats of future violence  
11 communicated by Alex and Jeissy.

12 So all three factual predicates each, you know,  
13 warrant the entry of the emergency relief sought. If your  
14 Honor is prepared, I can have my client speak on his own  
15 about each.

16 THE COURT: I will in a moment. But I do want to  
17 ask Mr. Siegler a few more things about whether there is a  
18 factual dispute. So plaintiffs have also alleged that  
19 Alexander Briceno assaulted Mr. Martell, or at least that  
20 the two men engaged in a physical fight on December 2, 2021.

21 So, again, this is from the perspective of your  
22 client who are the named defendants. Do you dispute it, or  
23 do your clients take the view that they have no information  
24 one way or the other because it's a little difficult to  
25 figure out what Jeissy Briceno's affidavit is saying.

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1 MR. SIEGLER: I'm sorry, I think it's very clear  
2 she was in a laundromat. She heard yelling from the street,  
3 she went to the door, she heard people yelling. She went  
4 outside the laundromat with her boyfriend and she saw two  
5 people arguing. She didn't see anybody strike anybody; she  
6 saw two people arguing. So she can't testify truthfully: I  
7 saw, you know, I saw so-and-so punch so-and-so. She didn't  
8 see it.

9 THE COURT: She can't dispute that it happened but  
10 she can certainly confirm that it did happen.

11 MR. SIEGLER: Look, I don't know about that.  
12 Mr. Briceno is innocent until proven guilty. My client  
13 didn't see an assault. So I think we can dispute that it  
14 happened. I know there's pictures and all this other stuff,  
15 and I have no reason to doubt Mr. Martell. As far as what  
16 my clients' position is, we can't testify what happened  
17 either way. We didn't see it.

18 THE COURT: Okay. And there is a statement that  
19 Jeissy Briceno videotaped the incident? Is there a  
20 videotape?

21 MR. SIEGLER: There is.

22 THE COURT: And why hasn't anyone produced it?  
23 Why haven't you produced it? Does it corroborate what she  
24 claims happened or didn't happen?

25 MR. SIEGLER: I gave it to the criminal defense

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1 attorney.

2 THE COURT: You gave the only copy?

3 MR. SIEGLER: No, I have a copy; he has a copy. I  
4 gave it to him.

5 THE COURT: I'd like to see it.

6 MR. SIEGLER: Sure. Okay.

7 THE COURT: What does it show?

8 MR. SIEGLER: It shows two people. It actually  
9 shows Mr. Martell backing away saying words to the effect  
10 of, You got it, don't worry. Go ahead. Don't worry. Just  
11 watch and wait. It shows two men shouting at each other. I  
12 think Jeissy does say something like, Why are you going  
13 after my money, or something like that. But it doesn't show  
14 the context of who brought up the lawsuit or brought up  
15 money first.

16 THE COURT: Okay. Sorry, I'm a little disturbed  
17 by this, Mr. Siegler. You have a piece of evidence that  
18 seems to corroborate in part what the plaintiffs are  
19 complaining, but yet, you didn't think it was appropriate to  
20 acknowledge that especially when you know the plaintiffs  
21 claim that there was such a videotape. There's a certain  
22 candor to the Court that I think, as you know, all lawyers  
23 are bound by.

24 MR. SIEGLER: Yes, and I'm being very candid now.  
25 I saw a tape, I gave it to the defense attorney. I thought

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1 that it might be, you know, irrelevant to that  
2 investigation.

3 THE COURT: Are you going to explain to me why she  
4 said something about taking her money? Is there any  
5 explanation that -- or is there any inference I should make  
6 other than it relates to this lawsuit?

7 MR. SIEGLER: The information that I have is that  
8 Mr. Martell brought it up first like now you're going to get  
9 it because I'm suing you guys or something to that effect.

10 So that's what sparked my client saying why are  
11 you going after my money or whatever she said. But I'll be  
12 happy to provide the tape to the Court and the tape to  
13 counsel and they can -- I just don't want to be in a  
14 position of prejudicing Mr. Briceno in a criminal matter.

15 THE COURT: No, no, this is not you about  
16 Mr. Briceno or just about him. This is about whether  
17 there's evidence that relates to the plaintiff's request  
18 against your client, Jeissy Briceno, and her motivation in  
19 contacting her brother that night or whether or not she was  
20 involved in some effort as plaintiffs allege to retaliation  
21 against or intimidate the plaintiffs in connection with this  
22 lawsuit. You know, this assault obviously was central to  
23 their client and this videotape of this assault obviously  
24 was a key piece of evidence. I just don't know how you  
25 don't disclose the fact that it exists and allow me to see

1 it or ask me to look at it in evaluating this claim. I'm  
2 distressed, quite honestly, to say the least.

3 What I'll probably do is I'll hear the evidence  
4 and I might issue the injunction until I see this other  
5 evidence assuming Mr. Martell testifies credibly. But what  
6 you're saying to me suggests that there is at least some  
7 corroboration via this videotape regarding Mr. Martel's  
8 account. There might be another part of this story, but I  
9 have not heard it yet with respect to any sufficiently  
10 competent evidence. I'm not going to rely just on the  
11 affidavit from defense when I'm hearing from Mr. Mizrahi and  
12 where there's a videotape that actually captures the  
13 incident in question at least in part.

14 All right. So obviously, with respect to the fact  
15 or the allegation that Jeissy Briceno stated, This is what  
16 happens when you try to take my money, or something to that  
17 effect, you're not disputing that.

18 MR. SIEGLER: No.

19 THE COURT: Okay. And the fact that Mr. Martell  
20 sustained injuries, is it the defendant's position that they  
21 don't have sufficient information to dispute it or they're  
22 actually actively disputing it based on something they know.

23 MR. SIEGLER: We can't testify to the injuries.  
24 We saw pictures, we don't know the providence of the  
25 pictures. We know there was an arrest of Alex, but as far

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1 as what injuries he suffered we don't know we can't know.

2 THE COURT: All right. Okay. I do want to hear  
3 from Mr. Martell. So if you'll take the stand, sir.

4 And you'll have an opportunity to cross-examine,  
5 which is certainly an opportunity to provide, certainly,  
6 process for defendants.

7 Raise your right hand.

8 **CARLOS MARTELL**, called by the Plaintiff, having been first  
9 duly sworn, was examined and testified as follows:

10 THE WITNESS: Yes.

11 THE COURT: Okay. Have a seat.

12 COURTROOM DEPUTY: State your name for the record.

13 THE WITNESS: Carlos Martell.

14 THE COURT: You may inquire. Perhaps if you're  
15 comfortable can you remain seated and use the microphone  
16 because if you stand you won't be as intelligible. Put the  
17 microphone in front because you know you want to face your  
18 witness.

19 DIRECT EXAMINATION

20 BY MR. MIZRAHI:

21 Q Could you please repeat your first and last name.

22 A Carlos Martell.

23 Q Carlos, are you familiar with a company by the name of  
24 W.B. Construction?

25 A Yes.

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1 Q What is W.B. Construction?

2 A A construction company.

3 Q And how are you familiar with this construction  
4 company?

5 A I used to work for them.

6 Q And when did you start working for this construction  
7 company?

8 A March or February 2016.

9 Q And when did you stop working for this construction  
10 company?

11 A January 2020.

12 Q So you worked at the company for about four years?

13 A Correct.

14 Q It's my understanding you filed a wage threat lawsuit  
15 against the company; is that correct?

16 (A brief pause in the proceedings was held.)

17 THE COURT: Keep your voice up. You're doing fine  
18 so far.

19 Go ahead.

20 Q Sir, it's my understanding that you work for the  
21 company for about four years?

22 A Correct.

23 Q It's also my understanding that you filed a wage theft  
24 lawsuit against the company; is that correct?

25 A Correct.

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1 Q And do you know when the wage theft lawsuit was filed?

2 A September 2021.

3 Q Carlos, who is Wladimir Briceno?

4 A The boss.

5 Q When you say, "The boss," you're referring to the boss  
6 of the construction company that you you used to work at?

7 A Correct.

8 Q Who is Jeissy Briceno?

9 A The boss, also.

10 Q And who is Jeimy Briceno?

11 A The boss.

12 Q And who is Betty Briceno?

13 A The mother of the sisters, Jeissy and Jeimy.

14 Q That would also make her Wladimir's wife?

15 A Correct.

16 Q Who is Alexander Briceno?

17 A Jeimy and Jeissy's brother.

18 Q That would also make him Wladimir and Betty's son; is  
19 that correct?

20 A Correct.

21 Q Before the filing of this lawsuit in September 2021,  
22 had you and Alexander Briceno ever gotten into a physical  
23 confrontation?

24 A No.

25 Q Before the filing of this lawsuit in September of 2021,



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1 had you and Alexander ever gotten into a verbal  
2 confrontation?

3 A No.

4 Q After the filing of this lawsuit in September of 2021,  
5 have any of the Briceno's ever contacted any of your fellow  
6 plaintiffs?

7 A Yes.

8 MR. SIEGLER: Objection. Calls for hearsay.

9 THE COURT: Overruled. Go a little slower with  
10 your questions.

11 Q Which of the Bricenos contacted your fellow plaintiffs  
12 after this lawsuit was filed?

13 A Alex.

14 Q You're referring to Alexander Briceno?

15 A Correct.

16 Q To your knowledge, what did Alex say to your fellow  
17 plaintiffs?

18 MR. SIEGLER: Objection, hearsay.

19 THE COURT: Overruled. You have a standing  
20 objection to the hearsay but I'm going to allow it.

21 MR. SIEGLER: Thank you, Judge.

22 Q To your knowledge, what did Alex say to your fellow  
23 plaintiffs?

24 A That if they don't take their name off the lawsuit that  
25 they're going to call INS, ICE, immigration.

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1 Q Could you repeat your answer, please.

2 A That if they don't take their names off the list  
3 they're going to call ICE on them.

4 Q When you say, "List," you're referring to the  
5 wage-and-hour lawsuit?

6 A Correct.

7 Q And how do you know that these conversations took  
8 place?

9 A They were told to me.

10 Q Do you know how these conversations took place?

11 A Through phone calls.

12 Q When you had stated that they were told to you, who  
13 were they told to you by?

14 A My fellow co-workers.

15 Q Is there a reason why you're not referring to your  
16 fellow co-workers by their names?

17 A They're scared for their safety.

18 Q When you say that they're scared for their safety,  
19 could you elaborate on that?

20 A None of them are here legally, so they're scared to get  
21 deported.

22 Q Carlos, what happened the evening of December 2, 2021?

23 A I was attacked.

24 Q Where were you attacked?

25 A I was at a laundromat.

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1 Q Was that the laundromat known as Turbo Laundry Limited  
2 laundromat in Woodside, New York?

3 A Correct.

4 Q Approximately what time were you attacked?

5 A 8:30.

6 Q Would that be 8:30 in the evening?

7 A Correct.

8 Q Who attacked you?

9 A Alex.

10 Q You're referring to Alexander Briceno?

11 A Correct.

12 Q Was anybody else there when you were attacked?

13 A Yes.

14 Q Who else was there when you were attacked?

15 A Jeissy and her husband.

16 Q You're referring to Jeissy Briceno?

17 A Yes.

18 Q And you're referring to a man?

19 A Correct.

20 Q Who was there with Jeissy Briceno?

21 A Correct.

22 Q During the attack, did Alex Briceno say anything to  
23 you?

24 A Yes.

25 Q What did Alex say to you?

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1 A This is going to happen to everybody that's on the  
2 list, meaning, the lawsuit. And that to be careful with my  
3 family, he's coming after my family.

4 Q During the attack, did Jeissy say anything to you?

5 A Yes.

6 Q What did she say?

7 THE WITNESS: Can I curse?

8 THE COURT: Yes, you may.

9 A While holding the phone recording, she says, "You bitch  
10 ass nigga, this is going to happen to everybody that tries  
11 to take my money."

12 Q You had had mentioned that Jeissy was recording the  
13 altercation; is that correct?

14 A Yes.

15 Q What was she recording with?

16 A With her phone.

17 Q Carlos, did you sustain any injuries as a result of the  
18 attack?

19 A Yes.

20 Q What injuries did you sustain?

21 A My eye, my forehead, my neck, my head, back of the  
22 head.

23 Q Did you photograph any of these injuries?

24 A Yes.

25 MR. MIZRAHI: May I approach the witness?

1 THE COURT: You may.

2 Q Carlos, I'm showing you a document that has been  
3 labeled as Exhibit A. It has been filed on ECF as Docket  
4 No. 49-1. Could you please familiarize yourself with these  
5 photographs.

6 A (Complying).

7 Q Are these photographs that you had taken of yourself  
8 after the attack on December 2, 2021?

9 THE COURT: Mr. Siegler, do you want see what he's  
10 referring to?

11 MR. SIEGLER: I'll stipulate into evidence.

12 THE COURT: Okay. Those can be admitted the  
13 photographs.

14 (Plaintiff's Exhibit A was received in evidence as  
15 of this date.)

16 THE COURT: Can I ask you a question, though, who  
17 took these photographs?

18 THE WITNESS: Me.

19 THE COURT: You did a selfie?

20 THE WITNESS: I was taking videos the day of the  
21 day after because of progressions.

22 THE COURT: Okay. And so, how soon after the  
23 incident did you --

24 THE WITNESS: When I woke up in the morning,  
25 December 3rd, on a Friday.

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1 THE COURT: All right. And the incident occurred  
2 at what time on December 2nd roughly?

3 THE WITNESS: 8:30ish, around there.

4 THE COURT: Okay. And right after the incident,  
5 did you have any kind of black-and-blue marks or anything?

6 THE WITNESS: Swelling, a lot of swelling. I have  
7 a picture of that. Also, when you see I get a day after  
8 that's when you see the black-and-blues and everything.

9 THE COURT: Go ahead, Mr. Mizrahi.

10 EXAMINATION BY

11 MR. MIZRAHI:

12 (Continuing.)

13 Q Carlos, do you think Alex Briceno, Jeissy Briceno, or  
14 any of the other Bricenos may assault you in the future?

15 MR. SIEGLER: Objection, leading.

16 THE COURT: Sustained. Sustained.

17 Q Carlos, it's my understanding that following this  
18 altercation you went to the 114th Precinct in Queens; is  
19 that correct?

20 A Correct.

21 Q And you went to the 114th Precinct in Queens to meet  
22 with anyone?

23 A Officer.

24 Q You met with an officer at the 114th Precinct?

25 A Correct.

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1 Q And when you were at the 114th Precinct, what did you  
2 tell the officer?

3 A That I was assaulted at the laundromat by Alex and he  
4 made me say everything.

5 Q When you say, "He made you say everything," you're  
6 referring to the testimony that you had given here today?

7 A Correct.

8 Q You're also referring to the testimony that you had  
9 provided in the form of your affidavit?

10 A Correct.

11 Q That we had submitted in connection with the  
12 preliminary injunction?

13 A Correct.

14 Q Carlos, I'm showing you another document that's been  
15 labeled Exhibit B. This document has been filed on ECF as  
16 Document No. 49-2. Please take a moment to familiarize  
17 yourself with this document. Let me know when you're  
18 finished.

19 MR. SIEGLER: Your Honor, we'll stipulate that  
20 Mr. Martell went to the police, filed a report. There was  
21 an arrest, there was an charge, and everything after the  
22 incident.

23 THE COURT: Okay. So you have no objection to the  
24 introduction of the police report?

25 MR. SIEGLER: No.

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1 THE COURT: All right. So that's admitted I have  
2 a copy of that all right.

3 (Plaintiff's Exhibit B was received in evidence as  
4 of this date.)

5 THE COURT: Go ahead. If you want to ask any  
6 questions about the reporting to the police. And I think  
7 also the defense would stipulate that there has been a  
8 criminal proceeding that followed thereafter with respect to  
9 Alex Briceno.

10 MR. SIEGLER: Correct.

11 EXAMINATION BY

12 MR. MIZRAHI:

13 (Continuing.)

14 Q It is my understanding based on the information that  
15 you had provided to the officer at the 114th Precinct that  
16 the charge was filed for assault and battery; is that  
17 correct?

18 A Correct.

19 Q It is also my understanding that after the filing of  
20 this charge against Alexander Briceno a Temporary  
21 Restraining Order had been entered against him by a criminal  
22 court in Queens; is that correct?

23 A Correct.

24 Q It is my understanding that that Temporary Restraining  
25 Order is only against Alex Briceno; is that correct?



1 A Correct.

2 Q And it's also my understanding that the Temporary  
3 Restraining Order is only in your favor and it doesn't cover  
4 any of your other co-workers; is that correct?

5 A Correct.

6 THE COURT: You don't need to ask the witness  
7 these questions.

8 MR. MIZRAHI: Your Honor, I have no further  
9 questions.

10 THE COURT: I would like to go back and hear more  
11 from you about what happened and what you know.

12 So let's go back first to the alleged threats by  
13 Alex Briceno against some of your co-workers to report them  
14 to INS.

15 When was the first time any of your co-workers  
16 said -- told you about such threats?

17 THE WITNESS: Say about when they first got the  
18 letter, the lawsuit letter.

19 THE COURT: What do you mean by the lawsuit  
20 letter?

21 THE WITNESS: When they got served.

22 THE COURT: So who got served?

23 THE WITNESS: The sisters.

24 THE COURT: Okay.

25 THE WITNESS: The sisters got served, Jeissy and

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1 Jeimy got served.

2 THE COURT: Do you know when that happened.

3 THE WITNESS: No, not exactly.

4 THE COURT: Why did you peg the conversation you  
5 had with your colleagues to that date? In other words, it  
6 wasn't your colleague who is got served but it was the  
7 defendants.

8 THE WITNESS: Correct. So they probably told Alex  
9 and Alex called the workers.

10 THE COURT: No, I don't mean that. In other  
11 words, how is it that you know that you got you started  
12 getting complaints from your friends or former workers after  
13 the defendants were served?

14 THE WITNESS: Because we went to the lawyer. And  
15 after we went to see the lawyer, that's when everything  
16 started happening.

17 THE COURT: Break that down for me. You and some  
18 of your former co-workers for the defendants went to your  
19 lawyer.

20 THE WITNESS: Correct.

21 THE COURT: And who is your lawyer?

22 THE WITNESS: Jason.

23 THE COURT: Mr. Mizrahi?

24 THE WITNESS: Mr. Mizrahi.

25 THE COURT: When did that happen?

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1 THE WITNESS: We went there beginning of  
2 September.

3 THE COURT: Okay.

4 THE WITNESS: I'll say the first week of  
5 September.

6 THE COURT: Okay. Why did you go there, just  
7 generally speaking. Don't tell me what was said but why did  
8 you go there?

9 THE WITNESS: To see about wage theft about  
10 overtime that was taken away from us.

11 THE COURT: Did you go there to talk about maybe  
12 filing a lawsuit?

13 THE WITNESS: Correct.

14 THE COURT: Okay. And so, that was you and how  
15 many other individuals?

16 THE WITNESS: Me and another individual.

17 THE COURT: Just one other?

18 THE WITNESS: Yeah, one other.

19 THE COURT: Okay. And how does that meeting at  
20 all connect with your former co-workers complaining about  
21 these threats?

22 THE WITNESS: They used to work with me, also.

23 THE COURT: Okay.

24 THE WITNESS: They have to come and speak to Jason  
25 about the same lawsuit.

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1 THE COURT: Okay. But, again, when was the first  
2 time that one of your co-workers said to you that Alex  
3 Briceno had threatened them with going to INS?

4 THE WITNESS: I guess after they got their  
5 paperwork saying that they were suing them.

6 THE COURT: How did you know that it was after he  
7 got the paperwork?

8 THE WITNESS: Alex told one of the guys, we see  
9 that you're suing us and that's when they continued to make  
10 the threats.

11 THE COURT: I see. So that was part of the  
12 conversation between Alex and one of your co-workers.

13 THE WITNESS: Correct.

14 THE COURT: How many of these co-workers of yours  
15 received such calls from Alex Briceno?

16 THE WITNESS: To my knowledge, two.

17 THE COURT: Two. And without identifying them,  
18 are they plaintiffs in this lawsuit?

19 THE WITNESS: Correct.

20 THE COURT: And describe what each of those  
21 individuals told you about the conversation with Alex  
22 Briceno.

23 THE WITNESS: He called them and asked them why  
24 we're doing this and to take their names off because he  
25 could further put more -- he could charge them with stuff,

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1 meaning, he could charge them and call ICE on them.

2 THE COURT: Did say that?

3 THE WITNESS: ICE, yes.

4 THE COURT: He specifically referred to ice when  
5 speaking to both of them?

6 THE WITNESS: Both of them, yes.

7 THE COURT: Now, were both of those people  
8 together when they got the call?

9 THE WITNESS: No.

10 THE COURT: Do you know how close in time when  
11 each of them received these calls?

12 THE WITNESS: No.

13 THE COURT: When did they first report the calls  
14 to you? Do you remember roughly what month?

15 THE WITNESS: September, right after they got the  
16 letter saying that they're getting sued.

17 THE COURT: Okay. Let me ask you a question, and  
18 this is -- I'm trying to pin down the time again.

19 If I told you that the lawsuits weren't actually  
20 served until October, would that affect your memory as to  
21 the timing of when your colleagues told you about the phone  
22 calls?

23 THE WITNESS: I don't remember the exact date when  
24 they told me. But they told me after they got served,  
25 that's how I knew they knew already. They called me and

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1 told me they got served already and there is what they told  
2 me.

3 THE COURT: And did your colleagues say how it is  
4 that Alex could call them? How it is that he had their  
5 phone number?

6 THE WITNESS: They used to work together. We all  
7 worked in the same company and so he had our phone numbers.

8 THE COURT: The phone was a hard line or a cell  
9 phone?

10 THE WITNESS: I don't know.

11 THE COURT: And each of these individuals, are  
12 they working somewhere else now and not for the defendants?

13 THE WITNESS: Correct.

14 THE COURT: And how long ago did you work for the  
15 defendants?

16 THE WITNESS: January 2020 was the last month I  
17 worked there, the end of January. I think it was 28th, I'm  
18 not sure of the date.

19 THE COURT: Did you ever work directly for Alex  
20 Briceno?

21 THE WITNESS: No.

22 MR. MIZRAHI: Objection, your Honor. I just  
23 wanted to make the distinction between their allegations in  
24 the amended complaint that included Alex Briceno as an  
25 employer.

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1 THE COURT: Yes. That's why I'm asking.

2 MR. MIZRAHI: And I just wanted to include the  
3 objection to state that there's a difference between, you  
4 know, working for a construction company and then the legal  
5 arguments concerning employer liability.

6 THE COURT: Okay. Hang on. Hang on. I'm  
7 overruling your objection because this is just a fact. I'm  
8 asking him a question of if he ever directly worked for him?  
9 You can make whatever argument you want about the alleged  
10 employer status of Mr. Alex Briceno. But I'm overruling  
11 your objection. I'm simply asking if this plaintiff ever  
12 worked directly for Alex Briceno.

13 MR. MIZRAHI: Excuse my interruption, your Honor.

14 THE COURT: No, it's all right.

15 When you worked for WB Maintenance & Design Group,  
16 did you have -- or any of the W.B. organizations -- I guess  
17 it is W.B. and Son Construction.

18 You worked for both; is that right?

19 THE WITNESS: It's one.

20 THE COURT: It's one. Did you ever see Alex  
21 Briceno on the job sites or in the office?

22 THE WITNESS: Yes.

23 THE COURT: Okay. And I know this is hearsay, and  
24 the defense will object, but what was your understanding  
25 about Alex Briceno's role in the company at the timings you

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1 saw him.

2 THE WITNESS: He's the boss of his own company.

3 THE COURT: A separate company?

4 THE WITNESS: A separate company.

5 THE COURT: That you never worked for?

6 THE WITNESS: Never.

7 THE COURT: Did any of the other plaintiffs, as  
8 far as you know, worked for Alex Briceno's other company?

9 THE WITNESS: Alex use to work with W.B. so a lot  
10 of the guys that worked in W.B. worked with him then he has  
11 his own company.

12 THE COURT: I see. But when the other guys worked  
13 with Alex, he was a worker like them and wasn't supervising?

14 THE WITNESS: He was a boss.

15 THE COURT: Then he created his own company?

16 THE WITNESS: Correct.

17 THE COURT: All right. Now, let's turn for a  
18 moment to the assault.

19 Describe to me what happened on the day from the  
20 moment you arrived at the laundromat.

21 THE WITNESS: I could start?

22 THE COURT: Yes, please.

23 THE WITNESS: I pulled in. The laundromat is on  
24 Northern Boulevard. The reason I go to that laundromat is  
25 because you could pull in with your car, it's a drive-thru.



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1 Basically you could park on the sidewalk. It's easier to  
2 unload all the laundry when it's in the trunk of your car,  
3 you walk right through the doors.

4 I took out the laundry, put the laundry right in  
5 front of the machine. I walked to get quarters. I see when  
6 I go to get quarters, I see somebody looking at me but I  
7 just don't know who it is; I don't really look at anybody.  
8 I took my quarters, walked back to the machine. I put my  
9 quarters in I still see somebody looking at me but I still  
10 didn't question it, it's just a laundromat. I put the  
11 quarters into the machine and my car, like I said, is parked  
12 right outside because you could park on the sidewalk.

13 So I walk right outside. The laundry machine  
14 takes half an hour to do. So I went in the car, got on the  
15 phone, spoke to my son for like five, ten minutes. Hung up  
16 the phone, put on my lap. I still had 20 minutes, 15  
17 minutes for the laundry to be done.

18 I took a little nap, I put the seat back. I took  
19 a little nap. I didn't lock the doors. The doors were  
20 closed but not locked. So I laid down, closed my eyes, and  
21 I woke up to getting hit.

22 THE COURT: You mean inside your car?

23 THE WITNESS: Inside my car, they opened the door.

24 THE COURT: Who is they?

25 THE WITNESS: I didn't know what was happening at

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1 this second. My eyes were closed. My eyes were closed, I  
2 was resting, 15 minutes left on the thing. When I just feel  
3 the door getting opened and getting hit.

4 THE COURT: In the what?

5 THE WITNESS: In the car.

6 THE COURT: What part of your body?

7 THE WITNESS: In my face.

8 THE COURT: Opened fist? Closed fist? Hand?

9 THE WITNESS: I woke up to them. So I managed to,  
10 you know, the center console for your arm, I kicked out,  
11 kicked who was on top of me out. I managed to get out. I  
12 had a zip-up hoodie, a hoodie jacket. So I got put over my  
13 head and he started hitting me with uppercuts.

14 THE COURT: To where?

15 THE WITNESS: My face. I'm kind of slim, so I  
16 managed to get out of the sweater as they pulled it over me.  
17 Then, as I was looking up, that's when I saw what was  
18 happening. I see Alex, I see Jeissy's husband, I see Jeissy  
19 filming everything. And in the midst of it, Alex is saying  
20 "Come fight, fight". And he says this is going to happen.  
21 He said this is going to happen -- more than that is going  
22 to happen to your family. And whoever signed the lawsuit,  
23 it's going to happen to them, also. As he's saying that,  
24 Jeissy is filming whatever she filmed. And she goes curse  
25 again. She says, "You bitch ass nigga, this is going to

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1 happen to whoever tries to take my money." And I'm backing  
2 up.

3 THE COURT: Did you say anything in response?

4 THE WITNESS: Y'all got this, no problem. Y'all  
5 got this. We see y'all got this.

6 THE COURT: When did you say that?

7 THE WITNESS: As I'm backing up because there's  
8 two men, Alex, and her husband.

9 THE COURT: Let's go back over this a little bit.  
10 When you said you were in the laundromat you  
11 noticed -- did you actually see someone looking at you, or  
12 you just felt it or you saw it out of the corner of your  
13 eye?

14 THE WITNESS: Yeah out of the corner of my eye. I  
15 don't really -- I don't know anybody in -- I go to the  
16 laundry. I wasn't paying attention to anybody at all.

17 THE COURT: Did you have a sense of how far away  
18 that person was?

19 THE WITNESS: Yeah, definitely. I would say about  
20 30 to 40 feet away from me. There was at least ten  
21 machines, ten machines, I guess. It's a big laundromat,  
22 it's an very big laundromat.

23 THE COURT: And when you loaded your machine was  
24 anybody close by you?

25 THE WITNESS: Yeah, there was.

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1 THE COURT: Either machine?

2 THE WITNESS: No, no. There was a lot of empty  
3 ones. A lot of empty ones.

4 THE COURT: Did you see anyone right next to you  
5 on either side when you were loading your machine?

6 THE WITNESS: No.

7 THE COURT: When you were loading your machine?

8 THE WITNESS: No.

9 THE COURT: So while you were inside the  
10 laundromat, you don't recall ever seeing Jeissy Briceno or  
11 her husband?

12 THE WITNESS: No.

13 THE COURT: Okay.

14 THE WITNESS: I never knew what her husband looked  
15 like. So the person that was looking at me turned out to be  
16 her husband.

17 THE COURT: Okay.

18 THE WITNESS: I never seen him, I didn't know who  
19 he was. So, like I said, till after I could see who he was,  
20 and I hear her say, "Come on, babe, let's go," that's a term  
21 of endearment for a significant other, that's how I figured  
22 out that's the husband.

23 THE COURT: And do you know that person's name?

24 THE WITNESS: No.

25 THE COURT: Okay. Because you never met him

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1 before?

2 THE WITNESS: Never met him.

3 THE COURT: Okay. So the whole time then you were  
4 in the laundromat, you didn't realize that Jeissy Briceno  
5 and her husband were there, also?

6 THE WITNESS: No.

7 THE COURT: Okay. You said then you go into your  
8 car, you fall asleep while your laundry is --

9 THE WITNESS: Being done.

10 THE COURT: Being done. And you wake up to  
11 someone hitting you.

12 THE WITNESS: Correct.

13 THE COURT: Are you in the driver's side or the  
14 passenger's side.

15 THE WITNESS: Driver's side.

16 THE COURT: You managed to get out?

17 THE WITNESS: Correct.

18 THE COURT: Kick your way out.

19 THE WITNESS: Correct.

20 THE COURT: And you say that Jeissy Briceno -- you  
21 said that Alex Briceno made this comment to you about --  
22 excuse me?

23 THE WITNESS: After hitting me. After I got out.

24 THE COURT: Yes.

25 THE WITNESS: He said that.

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1 THE COURT: And so, are you fighting with him at  
2 all?

3 THE WITNESS: No, I couldn't. I woke up to hits  
4 and then I escaped. And that's when I was backing up and  
5 that's when they were filming. I didn't know what was  
6 happening.

7 THE COURT: Did you ever throw a punch or do  
8 anything against --

9 THE WITNESS: No.

10 THE COURT: Hang on. Against either Alex Briceno,  
11 the husband, or Jeissy Briceno?

12 THE WITNESS: No.

13 THE COURT: Did you do anything to block any, or  
14 actually, let me back up.

15 When you kicked your way out of the car, did  
16 anyone hit you again?

17 THE WITNESS: Yes.

18 THE COURT: And who did that?

19 THE WITNESS: Alex.

20 THE COURT: You said upper cuts, right?

21 THE WITNESS: Yes.

22 THE COURT: Did you do anything to defend  
23 yourself?

24 THE WITNESS: I didn't know what was happening. I  
25 just tried to get away from the situation. I didn't know

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1 what was happening, I woke up to punches.

2 THE COURT: In relation to the upper cuts, when  
3 did Alex Briceno make those comments? Before, after,  
4 during?

5 THE WITNESS: After.

6 THE COURT: Okay.

7 THE WITNESS: While I'm backing up.

8 THE COURT: I see, October.

9 Where is Jeissy Briceno in relation to Alex and  
10 you?

11 THE WITNESS: She's on that with them closer to  
12 the laundromat. I'm backing away from the laundromat.

13 THE COURT: Okay.

14 THE WITNESS: So I was kind of going towards the  
15 street already.

16 THE COURT: All right. And then, when does she  
17 make the comments that you said?

18 THE WITNESS: While I'm backing up.

19 THE COURT: All right. And when do you say, I got  
20 it?

21 THE WITNESS: You got it. I told her, You got it.

22 THE COURT: Did you say that after Jeissy said  
23 what she said?

24 THE WITNESS: Correct.

25 THE COURT: Okay. And then what happened after

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1 you backed up?

2 THE WITNESS: I was backing up and they wanted to  
3 fight. And I just -- I'm not going to fight.

4 THE COURT: How about the husband? Did he try to  
5 fight with you, too?

6 THE WITNESS: They were both coming at me.

7 THE COURT: Who is the both?

8 THE WITNESS: Alex and her husband.

9 THE COURT: Okay. And what was Jeissy doing?

10 THE WITNESS: Filming.

11 THE COURT: Okay. And so, you backed up. How do  
12 you --

13 THE WITNESS: Walking backwards.

14 THE COURT: Towards the street?

15 THE WITNESS: On the sidewalk, there's a highway,  
16 that's the BQE right there. As I'm walking, as I see them  
17 coming towards, I'm backing up also because it's two guys.

18 THE COURT: And what happens then?

19 THE WITNESS: I see that -- they see I didn't want  
20 to fight. So Alex, I guess they were doing the laundry,  
21 Jeissy and her husband were doing the laundry. I see Alex  
22 getting into his car, a white truck, gets into his car and  
23 tells Jeissy, Let's go, let's go.

24 THE COURT: So they don't continue to pursue you  
25 after you back up?



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1 THE WITNESS: No, no that's it.

2 THE COURT: They leave?

3 THE WITNESS: They leave.

4 THE COURT: So who leaves?

5 THE WITNESS: I seen Alex get in his truck. So I  
6 seen it was safe for me to get in my car. I see Jeissy walk  
7 inside with her husband.

8 THE COURT: To the laundromat?

9 THE WITNESS: To the laundromat. I left my  
10 clothes there and I called my sister to come and get the  
11 clothes.

12 THE COURT: I see.

13 And did she do that?

14 THE WITNESS: Correct, yeah.

15 THE COURT: So you recovered your clothes from the  
16 laundromat?

17 THE WITNESS: Correct.

18 THE COURT: Okay. You went to the police the next  
19 day?

20 THE WITNESS: Correct.

21 THE COURT: Why didn't you go that night?

22 THE WITNESS: I didn't go that night because I  
23 went home. And I went home and seen my face. I wanted to  
24 speak to the attorney about what I did. I was never  
25 involved in anything like this. When I spoke to him, he

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1 told me go to the precinct. Only thing is that it was on a  
2 Friday. So, on a Friday -- my son lives in Connecticut -- I  
3 have to pick him up on Fridays from school. At school over  
4 there, it's a little bit different. You have to line up, so  
5 I need to be there by certain time. I didn't know how long  
6 it was going to be at the precinct. So what I did was I  
7 picked him up, brought him to my mom's, told my mom to watch  
8 him. After that, with traffic from Connecticut to New York,  
9 I went there at like 5:30 to the precinct.

10 THE COURT: Now, there's been an allegation that  
11 at the time you were working for defendants you were using  
12 drugs. Did you see that allegation.

13 THE WITNESS: Yes, I seen it.

14 THE COURT: So I have to ask you. Were you using  
15 drugs at the time of this incident?

16 THE WITNESS: No, ma'am.

17 THE COURT: None at all?

18 THE WITNESS: No.

19 THE COURT: You were described as shaking. Is  
20 that an accurate description of how you were in the  
21 laundromat?

22 THE WITNESS: No.

23 THE COURT: All right. Were you taking anything,  
24 or was there anything that might affect your memory as to  
25 what happened during this incident?

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1 THE WITNESS: No.

2 THE COURT: Do you want do ask any other  
3 follow-up, Mr. Mizrahi, before I let Mr. Siegler cross?

4 DIRECT EXAMINATION

5 BY MR. MIZRAHI:

6 (Continuing.)

7 Q Do you know what kind of car Alex Briceno was driving  
8 that night?

9 A A white pick-up truck.

10 Q Can you describe it?

11 A White. Usually, trucks have a flatbed. It didn't have  
12 a flatbed, it has like a bubble so you can store stuff,  
13 construction stuff, or something like that.

14 THE COURT: Actually, I do have one other  
15 question.

16 You said that your former co-workers told you  
17 about Alex Briceno called them after he got the lawsuit.

18 Now, you're aware that he's not named in the  
19 lawsuit, right?

20 THE WITNESS: Correct.

21 THE COURT: Okay. Can you explain that if you  
22 know?

23 THE WITNESS: I don't know, but he's an older  
24 brother. That's the only reason.

25 THE COURT: He didn't say anything about -- did he

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1 say anything specifically about getting served to your  
2 co-workers?

3 THE WITNESS: No, I honestly don't know that.  
4 They just called me telling me this is what he said to me.  
5 They were scared of being deported, so that's why I called  
6 the lawyer asking should they be nervous and the lawyer say  
7 no.

8 THE COURT: Mr. Siegler, your witness for cross.

9 MR. SIEGLER: Thank you.

10 CROSS-EXAMINATION

11 BY MR. SIEGLER:

12 Q What's the name of the people that contacted you about  
13 INS?

14 THE COURT: Well, let's hold on one second. I  
15 think we should set up some kind of a protective order. I  
16 am concerned about actually in some ways weaponizing the  
17 threat itself.

18 MR. SIEGLER: They're plaintiffs to the case, so  
19 we're going to know their names, their addresses.

20 THE COURT: Right. But I think -- well, listen, I  
21 think what is true, Mr. Mizrahi, is that if the allegation  
22 is true, the defendants already know who these individuals  
23 are but that actually cuts against plaintiffs keeping it a  
24 secret. What I don't want to have to is it being in the  
25 public record because, at this point, I don't want anything

1 to happen with respect to them if they, in fact, have any  
2 issues regarding their immigration status.

3 MR. SIEGLER: Your Honor, we do FLSA cases all the  
4 time and many, many plaintiffs in FLSA cases are here  
5 without papers. It's never been a problem, it's not my  
6 concern, it's not your concern.

7 THE COURT: No, no, it is my concern. If these  
8 allegations are true that your clients are threatening to  
9 expose them.

10 MR. SIEGLER: Not my clients, some other client  
11 that's not here today.

12 THE COURT: No, but the allegation is that it's  
13 because of the lawsuit and Alex Briceno is working with his  
14 family members who are the defendants in this case.

15 MR. SIEGLER: There's been no evidence of that.  
16 Only Jeissy making one comment. That's the only evidence  
17 tying these two together. I have three defendants who have  
18 done absolutely nothing. There's been no testimony about  
19 mom, dad, and the other sister.

20 THE COURT: That's your argument but I disagree  
21 with you, Mr. Siegler. The testimony, and the question is  
22 if I accept it, is that Alex Briceno, though, he's not named  
23 as a defendant knew that the lawsuit was filed against his  
24 family members, his sisters and his parents. So that, if  
25 credited, certainly indicates that they're working together

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1 and that your clients are either approving or requesting  
2 that he take this action, he being Alex Briceno. So that  
3 there is evidence to that effect. And the question is  
4 whether or not I credit the testimony I'm hearing.

5 I want to figure out how to deal with this  
6 sensitive issue. I'm going to seal this part of the  
7 transcript, but I do want you to identify the two plaintiffs  
8 who receive these calls.

9 THE WITNESS: Say them?

10 THE COURT: Yes, say their names.

11 MR. MIZRAHI: You can go ahead.

12 [REDACTED] [REDACTED] [REDACTED]  
13 [REDACTED]  
14 [REDACTED] [REDACTED]  
15 [REDACTED]  
16 [REDACTED] [REDACTED]  
17 [REDACTED]  
18 [REDACTED] [REDACTED]  
19 [REDACTED] [REDACTED]  
20 [REDACTED] [REDACTED]  
21 [REDACTED] [REDACTED]  
22 [REDACTED] [REDACTED]  
23 [REDACTED] [REDACTED]  
24 [REDACTED] [REDACTED]  
25 [REDACTED]

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1 [REDACTED] [REDACTED]  
2 [REDACTED] [REDACTED]  
3 [REDACTED] [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED] [REDACTED]  
7 [REDACTED] [REDACTED]  
8 [REDACTED]  
9 [REDACTED] [REDACTED]  
10 [REDACTED]  
11 [REDACTED] [REDACTED] [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED] [REDACTED]  
16 [REDACTED] [REDACTED] [REDACTED]  
17 [REDACTED] [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED] [REDACTED]  
21 [REDACTED]  
22 [REDACTED]

23 Q Who is Sasha Peña?

24 A My son's mother.

25 MR. MIZRAHI: I'm going to raise an objection and

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1 I'm going to ask opposing counsel to tread very carefully  
2 here.

3 THE COURT: Hold on one second.

4 The only part of the transcript to sealed just  
5 before Mr. Siegler starts his cross.

6 MR. MIZRAHI: We're going raise a relevancy  
7 objection here and I'm going to ask opposing counsel to  
8 tread very carefully because there is a very fine line into  
9 what is --

10 THE COURT: Let me hear from Mr. Siegler. What's  
11 the relevance of his --

12 MR. SIEGLER: The evidence may show that the fight  
13 had nothing to do with a lawsuit, and rather, was about some  
14 romantic entanglement between these three people.

15 THE COURT: It was certainly suggested in the  
16 affidavit. You can call it sensitive, I'm not sure how you  
17 can preclude the defense from inquiring as to another  
18 motive, if you will, of this altercation.

19 MR. MIZRAHI: Again, you can continue with the  
20 line of questioning I'm just going to ask you to tread very  
21 carefully here.

22 THE COURT: I'm the one doing the asking,  
23 Mr. Mizrahi.

24 Mr. Siegler, ask your questions.

25 MR. SIEGLER: Thank you.



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1 EXAMINATION BY

2 MR. SIEGLER:

3 (Continuing.)

4 Q Who is Sasha Pena?

5 A My son's mother.

6 Q Are you still romantically involved with Ms. Pena?

7 A No.

8 Q When did you stop being romantically involved with  
9 Ms. Pena?

10 A My son is two.

11 Q Can you give us a year?

12 A My son is eight, six years ago.

13 Q So you have no romantic involvement with Ms. Pena at  
14 all at this point?

15 A No.

16 Q Were you aware of whether Alex Briceno had an intimate  
17 relationship with Ms. Pena?

18 A No.

19 Q This is the first time you're hearing of it?

20 A Yes.

21 Q You said you mentioned your sister. Is that Yesenia?

22 A Yes.

23 Q She's the one who went down to pick up your laundry?

24 A Correct.

25 Q Do you recall whether Yesenia and Jeissy were good

C. Martell - Cross/Mr. Siegler

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1 friends?

2 A They were.

3 Q Did they go to high school together?

4 A I don't know.

5 Q How far is the Northern -- I'm sorry -- the

6 Turbo Limited Laundromat from your house?

7 A About one exit.

8 Q So how long to drive?

9 A Three minutes on the highway.

10 Q How much door to door?

11 A Huh?

12 Q How long did you drive that night to get to the

13 Turbo Limited?

14 A About three minutes. It's on the highway, it's one

15 exit away.

16 Q Is that your normal place to do laundry?

17 A Correct.

18 Q You normally do laundry on a Thursday?

19 A Yes, Thursday nights.

20 Q Do you live alone or with your son?

21 A Alone.

22 Q Was the laundromat crowded at 8:30 p.m. on a Thursday?

23 A No.

24 Q Do you know what Jeissy Briceno looks like?

25 A Yes.

C. Martell - Cross/Mr. Siegler

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1 Q How do you know what she looks like?

2 A I used to work for her.

3 Q What was the reason you lost your job in January 2020?

4 A I got sick.

5 Q Did you get fired?

6 A Yes.

7 Q Who fired you?

8 A Jeissy.

9 Q When did --

10 MR. SIEGLER: Let's go back on the sealed for a  
11 moment. Can we do that, your Honor? I'm going to ask him  
12 about these conversations with the two plaintiffs.

13 THE COURT: All right. So why don't we seal this  
14 portion.

15 EXAMINATION BY

16 MR. SIEGLER:

17 (Continuing.)

18 Q When did -- let me ask you this.

19 Has Wladimir Briceno ever communicated with  
20 you since the lawsuit began?

21 A No.

22 Q Has Betty Briceno ever -- has Betty Briceno  
23 communicated with you in any way since the lawsuit began?

24 A No.

25 Q Has Jeimy Briceno communicated with you at any time

C. Martell - Cross/Mr. Siegler

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1 since the lawsuit began?

2 A No.

3 Q And other than December 2nd, has Jeissy Briceno  
4 communicated with you at any time?

5 A No.

6 Q And you are, in fact, here illegally?

7 A Am I here what?

8 THE COURT: Sustained.

9 MR. SIEGLER: Okay.

10 THE COURT: Sustained.

11 Q What did [REDACTED] say to you when he called you about  
12 possible threats?

13 A That he was called by Alex and said that if he doesn't  
14 take his name off that they're going to file other charges  
15 and ICE, basically.

16 Q What time of day was the phone call?

17 A I don't know.

18 Q What time of the day was your phone call with [REDACTED]?

19 A I don't remember.

20 Q What day was it?

21 A I don't remember the day.

22 Q Was it dark or light?

23 A Daytime.

24 Q Is [REDACTED] someone you communicate with regularly?

25 A Just because of the lawsuit.

1 Q How did [REDACTED] here hear of the lawsuit?

2 MR. MIZRAHI: Objection, your Honor.

3 THE COURT: Sustained to the extent that you're  
4 looking for attorney-client information. He's the named  
5 plaintiff.

6 MR. MIZRAHI: Exactly, your Honor, yes.

7 MR. SIEGLER: I'm looking for communications  
8 between this witness and [REDACTED].

9 THE COURT: I think your question was: How did  
10 [REDACTED] know about the lawsuit? Did I mishear you?

11 MR. SIEGLER: I might have asked it --

12 THE COURT: Incorrectly.

13 MR. SIEGLER: Thank you.

14 EXAMINATION BY

15 MR. SIEGLER:

16 (Continuing.)

17 Q Did you advise [REDACTED] about the lawsuit?

18 A Correct.

19 THE COURT: I'm sorry. Could you clarify what you  
20 meet by advise him about the lawsuit. Please elaborate.

21 MR. MIZRAHI: Your Honor, I'm going to once again  
22 just ask my client Carlos, to the extent they're asking you  
23 any questions that requires you to divulge any  
24 communications between you and me and anyone else, I'm going  
25 to ask that you not divulge those communications. So please

C. Martell - Cross/Mr. Siegler

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1 only answer the questions to the extent that they don't  
2 require you to divulge any conversations that you and I have  
3 had, or that I have had with any of your fellow plaintiffs.

4 THE COURT: The easier way to think about it is if  
5 you are and [REDACTED] are talking directly, you can tell me. If  
6 you're talking with [REDACTED] with your lawyer, or through your  
7 lawyer, you don't have to testify about that.

8 THE WITNESS: Okay.

9 THE COURT: So did you and [REDACTED] have a  
10 conversation just by yourselves or without your lawyer about  
11 the lawsuit?

12 THE WITNESS: When I went to go in for the  
13 lawsuit.

14 THE COURT: Okay. So when you went in to try to  
15 file a lawsuit.

16 THE WITNESS: Correct.

17 THE COURT: Did you talk to [REDACTED] before that?

18 THE WITNESS: No, after that.

19 THE COURT: He wasn't with you at the meeting; is  
20 that right?

21 THE WITNESS: No.

22 THE COURT: Okay. Go ahead. What did you tell  
23 [REDACTED]?

24 THE WITNESS: Oh, that I'm doing a lawsuit because  
25 of the -- we weren't paid overtime.

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1 THE COURT: Okay.

2 THE WITNESS: And since he worked with us, if he  
3 wanted to put his name down for that because that's what the  
4 lawsuit is about.

5 THE COURT: Go ahead, Mr. Siegler.

6 EXAMINATION BY

7 MR. SIEGLER:

8 (Continuing.)

9 Q What, if anything, did you say to [REDACTED] after he told  
10 you that Alex said they would file charges on him?

11 A That I would speak to the lawyer for him.

12 THE COURT: Can I ask you a question? Was [REDACTED] a  
13 plaintiff at the time he got the call from Alex?

14 THE WITNESS: Correct.

15 THE COURT: Okay.

16 Q When did you get the call from [REDACTED]?

17 A I don't remember.

18 Q Was it after the lawsuit was filed?

19 A Correct.

20 Q Did you tell [REDACTED] about the lawsuit out of the  
21 presence of your attorney?

22 A Correct.

23 Q What did [REDACTED] tell you?

24 A That they threatened him with immigration.

25 Q Who is they?

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1 A Alex.

2 Q Did [REDACTED] say that Vladimir threatened him with  
3 deportation?

4 A I don't know. I don't know whether he speak to him or  
5 not.

6 Q He told you only Alex only?

7 A Yes.

8 Q So he didn't tell you Betty?

9 A No.

10 Q He didn't tell you Jeissy?

11 A No.

12 Q He didn't tell you Jeimy?

13 A No.

14 Q Same thing for [REDACTED]. Did [REDACTED] mention anything about  
15 any of the other Bricenno other than Alex?

16 A No, because of the lawsuit.

17 Q Okay. You testified to the Court in your December 6th  
18 affidavit which I could show you that defendants threatened  
19 certain plaintiffs to go to the INS. And then on  
20 December 9th, you clarified and said Alex. Which one is  
21 true?

22 MR. MIZRAHI: Objection to the extent that  
23 question misconstrues the affidavit. I think the affidavit  
24 would speak for itself. I don't think the client has to in  
25 front of him.



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1 THE COURT: Why don't you hand it up to him?

2 MR. MIZRAHI: I don't think that's what the  
3 affidavit says.

4 THE COURT: He can be cross-examined about his own  
5 affidavits.

6 MR. MIZRAHI: That's fine.

7 THE COURT: And what he meant. And to the extent  
8 that's it's contradictory, he should explain the  
9 contradiction.

10 (A brief pause in the proceedings was held.)

11 EXAMINATION BY

12 MR. SIEGLER:

13 (Continuing.)

14 Q Mr. Martell, I'm going to show you an affidavit and ask  
15 you if you recognize that document?

16 A Correct.

17 Q And flip to the last page.

18 THE COURT: Can you state for the record what  
19 you're showing him.

20 MR. SIEGLER: Yes, affidavit of Carlos Martell.  
21 It's Document 44-1 on PACER.

22 Q And is that your signature at the end?

23 A Correct.

24 Q Okay. I'm going to draw your attention --

25 MR. MIZRAHI: Can I have a copy of that -- can I

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1 ask to see a copy of that, please.

2 THE COURT: You can show it.

3 MR. SIEGLER: This is my own copy.

4 THE COURT: Show it to him. You presumably have a  
5 copy.

6 What's the date of that declaration?

7 MR. SIEGLER: It's December 5th.

8 THE COURT: Okay. Thank you.

9 MR. MIZRAHI: Thank you.

10 MR. SIEGLER: Thank you.

11 EXAMINATION BY

12 MR. SIEGLER:

13 (Continuing.)

14 Q Okay. I call your attention to Paragraph 6, and would  
15 you mind reading that to the Court, please?

16 A Shortly after, they became aware of plaintiff's lawsuit  
17 the defendants threatened and are continuing to report  
18 certain plaintiffs to the United States Immigration and  
19 Naturalization Services, INS.

20 Q Thank you. Mr. Martell, I'm going to show you another  
21 document. It's Document 49 on PACER. It's an affidavit of  
22 Carlos Martell signed and notarized on December 8th.

23 Do you recognize that document?

24 A Correct.

25 Q Is that your signature at the end?

1 A Correct.

2 Q Okay. Could you read Paragraph 7 to the Court, please?

3 A At the center of this intimidating campaign is Alex  
4 Briceno, three. Who has threatened and continued to  
5 threaten to report certain plaintiffs to the INS.

6 Q Three is a footnote. Could you read the footnote?

7 A Alex Briceno is Wladimir and Betty Briceno's son and  
8 Jeissy and Jeimy Briceno brother.

9 Q Thank you. So in order to obtain the Temporary  
10 Restraining Order, sir, you allege that defendants, all of  
11 them, have threatened to report certain other plaintiffs to  
12 INS but after the Temporary Restraining Order was entered  
13 now it's just Alex?

14 MR. MIZRAHI: Objection to the form of that  
15 question.

16 MR. SIEGLER: I'm not even finished with the  
17 question.

18 MR. MIZRAHI: You can continue.

19 THE COURT: Mr. Mizrahi, I decide who gets to  
20 continue or not and I'm going to overrule the objection.  
21 Go ahead.

22 Q Mr. Martell, can you explain the difference why first  
23 you said defendants and then you just said just Alex?

24 THE COURT: Yes, you may comment or respond,  
25 rather.

1 A Defendants, I said, because it's a whole their family  
2 has -- it's against the family, the lawsuit. But he's the  
3 one that called his own.

4 Q Do you have any evidence that Alex is doing these  
5 things at the request of Wladimir?

6 A For me? Like when I was attacked, there's text  
7 messages showing that she called him to come and see me  
8 basically on the text.

9 Q Did Wladimir ask Alex to assault you?

10 A I don't know.

11 Q You don't know?

12 A No.

13 Q Did Betty Briceno the mom ask Alex to assault you?

14 A I don't know.

15 Q Did Jeimy the sister ask Alex to assault you?

16 A I don't know.

17 Q Did Jeissy ask Alex to assault you?

18 A She text him to come to the laundromat insinuating  
19 something.

20 Q Do you know why she texted that?

21 A No.

22 Q Okay.

23 MR. SIEGLER: No further questions.

24 THE COURT: All right. Thank you. Did you want  
25 to ask any redirect, Mr. Mizrahi?

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1 MR. MIZRAHI: No.

2 THE COURT: Have a seat. Thank you very much,  
3 Mr. Martell.

4 I do have one question for you, Mr. Mizrahi,  
5 relating to the photograph that Mr. Martell took of his  
6 alleged injuries.

7 Do you have anything that would provide or  
8 substantiate when that photo was taken? Metadata or  
9 anything like that?

10 MR. MIZRAHI: I do, your Honor.

11 THE COURT: Okay. What do you have?

12 MR. MIZRAHI: After Carlos Martell's assault, I  
13 asked him whether he had taken any photographs or videos of  
14 his injuries. That conversation, I believe, took place the  
15 day after the attack.

16 THE COURT: So December 3rd?

17 MR. MIZRAHI: So I had communicated with my client  
18 on December 3rd and I asked him, Carlos, did you photograph  
19 yourself after the attack? He said, yes, I did. I asked  
20 him if he could provide me with any copies of photos or  
21 videos that he taken to document his injuries. In response,  
22 he had provided me with a video that he had taken of himself  
23 documenting his injuries. I have a copy of that video on my  
24 phone. I could provide it to the Court now. That video  
25 should have metadata, time-stamped metadata, corroborating

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1 when it was taken.

2 THE COURT: Okay. That sounds fine because even  
3 though the plaintiff, Mr. Martell, may have provided that  
4 video to you a day after the assault, obviously, the photo  
5 or video could have been taken long before then and in  
6 connection with some other incident. But if, in fact, the  
7 original has a date or timestamp on it that would be useful.  
8 I don't know if that's ordinarily true I'm just thinking  
9 about my own experience with photos or videos on iPhone. It  
10 certainly indicates the length of it, but it doesn't even  
11 tell you when it was taken unless you program it that way, I  
12 suspect.

13 MR. MIZRAHI: Your Honor, we have that documentary  
14 evidence. We can provide it to the Court.

15 THE COURT: Okay. So you have -- okay. Pardon my  
16 ignorance, I'm not sure what it is you have but if you have  
17 that yes, I would like to see that as well.

18 Mr. Martell can you retake the stand for one  
19 moment. I'm so sorry. I'll remind you that you are still  
20 under oath.

21 (Witness takes the witness stand.)

22 **CARLOS MARTELL**, called as a witness, having been previously  
23 duly sworn, was examined and testified as follows:

24 THE COURT: Please have a seat so you are still  
25 under oath, remember that.

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1           You mentioned that you were terminated from your  
2       employment by W.B., right?

3           THE WITNESS: Yes.

4           THE COURT: And you said it was because you were  
5       sick.

6           THE WITNESS: Correct.

7           THE COURT: What did you mean by sick?

8           THE WITNESS: Do you want me to tell you. On  
9       Friday we collect our paychecks on Friday.

10          THE COURT: Yes.

11          THE WITNESS: Friday we got text messages on  
12       Friday. I told her that I was sick. That was before  
13       Corona. So January we didn't anything about that.

14          THE COURT: January 2020.

15          THE WITNESS: I had a fever. So when I picked up  
16       my check, I told her I was sick. I told her, I'll tell you  
17       how I feel throughout the weekend to see how I feel on  
18       Monday. Saturday, I text her, also. I told her I'm not  
19       feeling too well, let's see how I feel tomorrow, Sunday. I  
20       text her saying I'm not feeling well. I woke up on Monday  
21       around 5:00 in the morning because we have to be at work at  
22       7:00. I text her at 5:00 in the morning letting her know  
23       I'm still sick, I'm going to take some NyQuil so I could  
24       sleep to off more. I woke up at 11:00 o'clock,  
25       12:00 o'clock on a Monday and she says just take the whole

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1 week off. And then that's it. I told her thank you for  
2 everything and that's it.

3 THE COURT: I'm sorry. Why did you view yourself  
4 as having been fired then, or do you view yourself as having  
5 been fired?

6 THE WITNESS: Of course. I asked her in the  
7 messages. I don't get it why I'm being penalized?  
8 Basically, you're being punished for coming to work, I gave  
9 you the week off.

10 THE COURT: But if all she said was take the week  
11 off, why did you view that as being fired?

12 THE WITNESS: When they don't give you work,  
13 basically, they don't want you there. That's how the  
14 company really works. They don't give you a letter saying  
15 you're terminated or nothing like that. They don't give you  
16 work. That's the way they don't want you there anymore.

17 THE COURT: Right. But she simply said to you  
18 take the week off.

19 THE WITNESS: Yes.

20 THE COURT: Did you believe that you could come  
21 back and work for them?

22 THE WITNESS: No.

23 THE COURT: After the week?

24 THE WITNESS: No.

25 THE COURT: So --



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1 THE WITNESS: This happens a lot. When they tell  
2 you, we don't have no work for you, just take a day off,  
3 they don't want you to be there.

4 THE COURT: Did you feel that your termination was  
5 unfair?

6 THE WITNESS: Yes.

7 THE COURT: And do you hold Jeissy Briceno as  
8 responsible for your firing?

9 THE WITNESS: Correct, yes, she is the boss.

10 THE COURT: Do you feel resentful at all towards  
11 her for having fired you?

12 THE WITNESS: No, it's business, I guess. But,  
13 no, not resentful.

14 THE COURT: Even though you think it was unfair?

15 THE WITNESS: Very unfair.

16 THE COURT: Did you view yourself as a good worker  
17 before then?

18 THE WITNESS: Correct. I was one of the  
19 supervisors there.

20 THE COURT: Did you have any issues before about  
21 showing up or being sick?

22 THE WITNESS: No, nothing. It was that that we  
23 didn't know Corona. We didn't know what it was. So I had a  
24 regular fever, a regular flu, basically, from Friday,  
25 Saturday, Sunday, and Monday.

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1 THE COURT: Why are you connecting it to Corona  
2 since, as you know --

3 THE WITNESS: I guess, I'm guessing that you knew  
4 about Corona and things like that that you would give leeway  
5 because of that because you understood more.

6 THE COURT: Oh, I see.

7 THE WITNESS: That's why.

8 THE COURT: How long did it take to you find work  
9 after you were terminated by W.B.?

10 THE WITNESS: The next week.

11 THE COURT: And where did you start working then?

12 THE WITNESS: It was called, it was a marble place  
13 a tile and marble place in the warehouse.

14 THE COURT: How long did you work for them?

15 THE WITNESS: I worked for a month and then I got  
16 a better job in construction.

17 THE COURT: Okay. And how long did you work for  
18 that next company?

19 THE WITNESS: Still working.

20 THE COURT: Okay. Even though there was a  
21 pandemic?

22 THE WITNESS: Yes. We worked through the  
23 pandemic.

24 THE COURT: Okay. Did anyone want to ask any  
25 other questions based on what I just asked Mr. Martell?

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1 MR. MIZRAHI: None from plaintiffs.

2 MR. SIEGLER: No.

3 THE COURT: All right. You may step down. Thank  
4 you again.

5 (Witness leaves the witness stand.)

6 THE COURT: Let me ask you a question,  
7 Mr. Mizrahi.

8 Tell me all of the evidence that you want me to  
9 consider with respect to the involvement of the parents who  
10 are defendants, Wladimir Briceno and Betty Briceno. And I  
11 say involvement in the alleged harassment and intimidation.

12 MR. MIZRAHI: Your Honor, we ask the Court to  
13 consider the fact that Wladimir, Betty, and their daughters  
14 have been named as individual defendants in the underlying  
15 complaint filed in September 2021.

16 We ask the Court to consider the fact that  
17 typically before formal service is effectuated, it is not  
18 unusual for individual defendants to receive solicitations  
19 through the mail from attorneys or through other  
20 third-parties informing them of the filing of a complaint.  
21 Typically, these solicitations are done the same day in  
22 order to obtain engagements from potential clients.

23 THE COURT: Well, I certainly accept the fact that  
24 the parents know about the lawsuit. The question is: What  
25 evidence, if any, do you have that they somehow instigated

1 or approved of or aided this campaign of intimidation and  
2 harassment?

3 MR. MIZRAHI: We further ask the Court to consider  
4 the testimony that is presented today by Mr. Martell that  
5 Alex had worked alongside his father; that the Bricenos had  
6 both worked, that both Alex and Wladimir worked alongside  
7 each other; that they had shared the same employees.

8 We ask the Court to consider the fact that very  
9 shortly after the filing of this complaint against Wladimir  
10 and Betty, Alex had started targeting certain individually  
11 named plaintiffs.

12 Your Honor, the, you know, defense counsel had  
13 stated that Wladimir and Betty are in their-Beth in their  
14 70s, I'm not disputing that. And it's, you know, of course,  
15 you know, why would they pick up the phone themselves, these  
16 two elderly people, when they could get other people to do  
17 it for them. And, in this case, they had Alex, they had  
18 Jeissy, they had Jeimy.

19 THE COURT: Let me ask you a question about Jeimy  
20 what evidence do you have that she was involved in any of  
21 these alleged threats to report people to INS or this  
22 assault that happened on December 2nd?

23 MR. MIZRAHI: We're using the defendants as a  
24 plural to kind of show that we know that there was a phone  
25 call placed by Alex. We know that all the Bricenos were

1 named as individual defendants. Alex wasn't named as an  
2 individual defendant at that time but for some reason he  
3 knew of it. So he would only know of it had he obtained  
4 information from one or all of the individual defendants.  
5 We don't have text messages, we don't e-mails, and I'm sure  
6 we may get some of that information during discovery. But I  
7 think the circumstantial evidence given the temporal  
8 proximity and given the, you know, the intimate  
9 relationship, familial relationship, between the parties at  
10 issue. I think it's not, you know, unfair to say, yeah, I  
11 think they're working together here.

12 THE COURT: Okay. All right.

13 Do you want to make any additional argument that  
14 you haven't already in your written submissions regarding  
15 the preliminary injunction you seek?

16 MR. MIZRAHI: We rest on our filings. We rest on  
17 the testimony that was provided by Mr. Martell to the Court  
18 here today. We don't want to, you know, there's nothing  
19 further that we feel like we need to add, your Honor.

20 THE COURT: Mr. Siegler, and actually, before I  
21 hear from you Mr. Siegler, let me note for the record that I  
22 failed to unseal the transcript. So we'll unseal that after  
23 Mr. Mizrahi's testimony in which he talks about the two  
24 named plaintiffs, or one named plaintiff and one opt-in  
25 plaintiff, just so the parties know.

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1           Is there any objection to unsealing the rest of  
2 the transcript after the reference specifically,  
3 specifically, to those individuals?

4           MR. SIEGLER: Not from plaintiffs, your Honor.

5           THE COURT: All right. So, Mr. Siegler, I'll hear  
6 from you on the preliminary injunction. Let me just say  
7 this: I do credit Mr. Martell's testimony. And, for me,  
8 the question is what type of injunction to impose and  
9 everyone is aware of the factors. So I'm giving you the  
10 benefit of my thoughts on this, Mr. Siegler, so you can  
11 respond.

12           With respect to the likelihood of success on the  
13 merits or sufficiently serious questions, I do think that  
14 the plaintiffs have met their burden at least with respect  
15 to a current defendant, Jeissy Briceno, and also the new  
16 defendant in the amended complaint, Alex Briceno, with  
17 regard to claims of retaliation and assault and battery  
18 which is obviously a state law claim. I find that the  
19 evidence is credible.

20           Mr. Martell was credible in his description of the  
21 event isn't contradicted by the defendants offering of an  
22 affidavit, and apparently, not really contradicted by this  
23 video that wasn't produced but should have been. So I do  
24 think that there's at least sufficiently serious questions  
25 going to the merits.

1           Now, I see there's a procedural issue here, and  
2   so, I will allow the plaintiffs to amend as a proposed --  
3   the complaint to add Mr. Briceno and these additional  
4   claims. And I understand that there might be some  
5   additional claims from some of the plaintiffs who are now  
6   going to be added; is that correct? New plaintiffs, I  
7   should say.

8           MR. MIZRAHI: Yes, Your Honor.

9           THE COURT: Okay. With respect to irreparable  
10   injury, I find that there would be an irreparable injury if  
11   the plaintiffs are prevented or intimidated into not  
12   pursuing their lawsuit. There is obviously an intangible  
13   harm here. An intangible one. I reference the intangible  
14   one because question is, is it a harm that can be  
15   compensated. And the intangible harm is preventing access  
16   to the justice system which isn't compensable if the lawsuit  
17   is not actually pursued. The balance of hardships I find  
18   decidedly tips in plaintiffs' favor. I don't feel that the  
19   defendants are going to be harmed at all by simply being as  
20   the defense acknowledges told to obey the law and not to  
21   make false complaints to ICE or to -- or for some ulterior  
22   purpose report someone to ICE, or to refrain from assaulting  
23   someone which is obviously against the law.

24           So I don't feel that the defendants will be harmed  
25   by an injunction that tells them not to violate the law

1 during the pendency of this case. The speculative harm  
2 about plaintiffs bringing false claims to support contempt  
3 motions is simply that, it's sheer speculation and obviously  
4 ignores the fact that any contempt motion would have to be  
5 based on facts that I find are established and will be  
6 tested through the process that we have here. So the  
7 possibility of someone falsely moving for contempt is not an  
8 actual harm to defendants.

9 And then, lastly, I find that the public interest  
10 would certainly be served and would not be disserved by the  
11 issuance of a preliminary injunction under these  
12 circumstances. No litigant should ever be intimidated or  
13 caused to fear retribution for bringing a lawsuit that they  
14 feel is meritorious.

15 So I do find that this assault happened as  
16 described my Mr. Martell. I do credit the reports about  
17 Mr. Alex Briceno at least calling two of the potential  
18 plaintiffs. One a named plaintiff and the other one an  
19 opt-in plaintiff and threatening them with reporting to  
20 immigration authorities, an especially potent threat in a  
21 case such as this.

22 So, therefore, I do want to issue an injunction as  
23 well as allow plaintiff to amend their complaint. The only  
24 issue really, Mr. Siegler, that I'd like you to address is  
25 to whom will this injunction apply. And, quite frankly, my



1 inclination is only to apply it to Jeissy Briceno and also  
2 Alex Briceno once he's added to the case.

3 And, as I said before, you're right, I think he  
4 has a light to revisit this issue once he's served and he's  
5 represented by someone. So I think there's a legitimate  
6 question about whether or not I can issue the preliminary  
7 injunction about a defendant who has not yet been served  
8 with the complaint so it may actually be meaningless. But,  
9 certainly, once the complaint is filed, Mr. Alex Briceno  
10 will be notified that he's also enjoined at this time from  
11 making any threats or carrying out any assaults against  
12 anyone to intimidate or retaliate against them in connection  
13 with the lawsuit.

14 So, Mr. Siegler, I did say I would let you be  
15 heard.

16 MR. SIEGLER: Thank you, Judge.

17 I did obviously hear your ruling. I agree that if  
18 there's an injunction to be entered, it should be against  
19 Alex who is not here and perhaps Jeissy. If your Honor is  
20 inclined, you know, I can certainly see your reasoning for  
21 that. I would ask that any injunction be required to be  
22 served on Alex within a certain period of time so we can  
23 avoid this issue where he's in limbo, things are being  
24 ordered against him, and he really has no notice of it.

25 So if we could add that, you know, within seven

1 days or something. My clients will be served, obviously,  
2 because they're represented. And, I mean, your Honor made a  
3 ruling. I tend to disagree about the INS threat, one of  
4 which was made allegedly by a nonplaintiff at the time which  
5 strikes me as odd. But, you know, it's not really  
6 my -- it's really not my witness it's Mr. Briceno can  
7 address that at the appropriate time. And you're granting  
8 him leave I guess at any time to dissolve the injunction  
9 upon his motion.

10 THE COURT: Or at least to contest it, which could  
11 have an impact on your client as well. But just so the  
12 record is clear, I have credited what Mr. Martell reported  
13 about the assault incident which is the only incident in  
14 which Jeissy Briceno is directly implicated. And I do  
15 credit Mr. Martell's reporting about him being assaulted  
16 without any warning or notice and without any provocation by  
17 him and with Jeissy Briceno recording it which you've  
18 confirmed, and then also making comments about taking her  
19 money which you also confirmed in the context of Mr. Alex  
20 Briceno and Ms. Jeissy Briceno trying to send a message  
21 about people who file lawsuits against them.

22 Perhaps there's some other motivation, although  
23 that wasn't really borne out by any of the testimony of  
24 Mr. Martell including cross-examination. I didn't sense,  
25 actually, that he was being untruthful about any prior

1 interactions with Mr. Alex Briceno over the mother of  
2 Mr. Martell's children or even a longstanding resentment  
3 against Jeissy Briceno for firing him under circumstances he  
4 said seemed unfair. It sounds like Mr. Martell was able to  
5 get back to work pretty quickly for one, and then another  
6 company. Perhaps that mitigates any ill will he has against  
7 Jeissy Briceno for firing him. Like I said, based on my  
8 observation of Mr. Martell, I do credit his testimony and  
9 his account of what's happened and that does to me implicate  
10 Ms. Jeissy Briceno and Mr. Alex Briceno in this campaign, or  
11 at least in some efforts. Maybe campaign is overstating it.  
12 But at least in two or three incidents of trying to  
13 intimidate or retaliate against the plaintiffs who brought  
14 this lawsuit, and that's something that has to be shut down.

15 The message, obviously, should be sent to your  
16 other clients that this injunction, while only applying  
17 right now to two of the defendants assuming that the  
18 complaint is amended, there should be nothing of this sort  
19 happening between now and when this case gets resolved or  
20 else, obviously, it will be met with a swift injunction, if  
21 not a contempt motion that could be very costly if not  
22 otherwise punitive against the defendants.

23 MR. SIEGLER: Understood, your Honor.

24 THE COURT: Honestly, I think the filing of the  
25 motion in itself should have some kind of prophylactic

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1 effect.

2 MR. SIEGLER: Yes.

3 THE COURT: Or should persuade anyone who is  
4 thinking of doing this not to do so.

5 MR. SIEGLER: Can I make a comment about the  
6 motion to amend?

7 THE COURT: Yes.

8 MR. SIEGLER: They want to add this company called  
9 W.B. & Son Construction is no longer --

10 THE COURT: A viable entity?

11 MR. SIEGLER: Yes, it was dissolved in 2016. And  
12 Alex and his dad split up. This was a family business, they  
13 ended in 2014 and then it took a while for the corporation  
14 do dissolve. I guess they failed to file returns and  
15 things. That is well before the period of the FLSA period  
16 and even the New York period because Jeissy said without  
17 contest that, you know, they weren't doing anything in 2015  
18 either. None of the plaintiffs worked, apparently, for the  
19 construction company. They worked for this other entity  
20 called W.B. Maintenance and Repair, not maintenance and  
21 design.

22 So I know why plaintiffs' counsel included this  
23 entity because he wants to get Alex Briceno as an employer.  
24 But I want to flag this issue because there maybe a motion  
25 to dismiss this particular entity because it didn't employ

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1 any of these plaintiffs.

2 THE COURT: I thought it employed Mr. Martell.

3 MR. SIEGLER: He testified it did. He testified  
4 it is one company. It was called construction. There's  
5 actually different entities.

6 THE COURT: Go ahead, Mr. Mizrahi.

7 MR. MIZRAHI: Two or three responses.

8 Number one, I think that there is, you know, a  
9 difference between a d/b/a and a legal entity. Number two,  
10 the entity at issue W.B. & Son Construction Corp. was  
11 included in the underlying complaint filed in  
12 September 2021, it was not a newly added defendant. And an  
13 answer to the client was actually already filed by prior  
14 counsel Stephen Hans. Not raising any issue with the  
15 employer liability of this entity.

16 THE COURT: Well, I do see that  
17 W.B. & Son Construction Corp. is already a defendant in this  
18 case.

19 So are you referring to that entity, Mr. Siegler?

20 MR. SIEGLER: Yes, that's the entity that was  
21 dissolved. I'm not sure why prior counsel didn't address  
22 that. We're certainly not barred. We can bring that motion  
23 at any time, I think. But it may help narrow the case and  
24 these FLSA cases and joint enterprise cases are very complex  
25 and all really they need is one plaintiff to say I work for

1 both. I guess it will shake out in discovery then.

2 THE COURT: Let's see what happened. You can  
3 move, but first, you have to file a premotion conference  
4 letter explaining why it is you want to dismiss the  
5 W.B. & Son entity but we can address that then. And even if  
6 the parties can talk and decide that they want to jointly  
7 amend or the plaintiff wants to amend the complaint based on  
8 some agreement, that's fine. But for now I'm going to  
9 address the two motions before me. The one for the  
10 preliminary injunction and the motion simply to allow the  
11 amended complaint to be filed.

12 Did you want to say anything else, Mr. Mizrahi?

13 MR. MIZRAHI: It was an originally pled defendant  
14 in this case. The last thing I want to say is that, you  
15 know, we presented a meaningful argument with respect to  
16 employer liability for Alexander Briceno given the  
17 admissions in the affidavit that he was a co-owner of the  
18 entity, and in light argument that he we had raised with  
19 respect to the single integrated enterprise.

20 That being said, you know, there are  
21 representations in defendant's motions that we are worried  
22 about judicial efficiency and we don't want to waste any  
23 resources. And then there's money that we should be worried  
24 about conserving here, you know, the threatened motion to  
25 dismiss or at least a contemplated motion to dismiss I think

1 just runs opposite those representations.

2 So I'd like to move forward with this case. I  
3 think that this should have been, should have and is a  
4 straightforward FLSA case. I'd like to get to the bottom of  
5 this. And, you know, I think that -- I think that's it,  
6 your Honor.

7 THE COURT: It may well be, Mr. Siegler, for the  
8 reasons you're saying namely that FLSA and joint enterprise  
9 issues are complicated and often factually based or  
10 determined. It may be that the better course is for you to  
11 file summary judgment at some point after discovery is taken  
12 and you can effectively argue that the entities are separate  
13 or whatever your argument is and that W.B. Construction  
14 didn't employ, or wasn't the employer, for these plaintiffs.

15 The fact that it dissolved obviously is something  
16 that seems to be undisputed. I just don't know whether or  
17 how that effects all the claims for the various plaintiffs.  
18 I don't know if that eliminates everyone's claims because  
19 2016 is only five years ago, right?

20 MR. SIEGLER: That's why I said 2015 would take it  
21 within the six-year -- but I think what's going to come out  
22 is that it's a family with numerous businesses, some of  
23 which involved Alex and some of which involved.

24 THE COURT: Involved who?

25 MR. SIEGLER: Some of which involved Alex and some

1 of which didn't.

2 THE COURT: I do think, and I am a fan of  
3 efficiency, so if that issue or the appropriateness of  
4 having W.B. & Son in this case is one that can be rolled in  
5 to various other issues perhaps in summary judgment  
6 especially because an answer was already provided for that  
7 defendant without raising a motion to dismiss, I think  
8 that's the more efficient course. But, at this moment, to  
9 the extent you're speaking about Alex Briceno, he's not your  
10 client; and so, we'll have to see what his lawyer says when  
11 he is served with the amended complaint.

12 So the rulings are as follows.

13 The amended complaint can be filed and it should  
14 be served as required by the rule. I also direct plaintiffs  
15 to file their preliminary injunction motion, the more recent  
16 filings or papers that gave rise to this hearing. And then,  
17 there's going to be a docket order about the preliminary  
18 injunction. But also to note you should send him a copy of  
19 the docket order or minute entry that summarizes the fact  
20 that I'm issuing a preliminary injunction enjoining Alex  
21 Briceno and Jeissy Briceno from -- and I should formally  
22 word it -- did you have a proposed order?

23 MR. MIZRAHI: I did, your Honor. It was attached,  
24 I believe, as Exhibit C to the Mizrahi declaration. We ask  
25 that the Court consider the additional language covering



1 both of these named individuals directly and indirectly.  
2 There's language in the proposed the order that, you know,  
3 reflects that they cannot act through any third-parties.

4 THE COURT: Yes. Probably what I'll do is, just  
5 so there is no ambiguities, I will issue a formal order.

6 Have you provided a copy of your proposed order to  
7 us in Word via --

8 MR. MIZRAHI: There's an e-mail to your chambers  
9 pursuant to your Honor's individual rules.

10 THE COURT: Good. All right. So I will issue  
11 something to effect. The gist of that will be those two  
12 defendants and their agents or, I guess, agents or  
13 employees, et cetera are barred from intimidating,  
14 harassing, or retaliating against any plaintiff in  
15 connection with the lawsuit.

16 So the language will be fine tuned a bit, but that  
17 will be the gist of it and that should be served also on  
18 Mr. Alex Briceno when he gets a copy of amended complaint.

19 Is there anything else we need to address from  
20 you, Mr. Mizrahi?

21 MR. MIZRAHI: Nothing further, your Honor. I  
22 thank the Court for its time.

23 THE COURT: Mr. Siegler.

24 MR. SIEGLER: No, Your Honor.

25 THE COURT: Thank you everyone and have a good

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1 holiday.

2 MR. SIEGLER: You, too.

3 THE COURT: Stay safe.

4 (WHEREUPON, this matter was adjourned.)

5  
6 \* \* \*

7  
8 CERTIFICATE OF REPORTER

9 I certify that the foregoing is a correct transcript of the  
10 record of proceedings in the above-entitled matter.

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15 \_\_\_\_\_  
16 Anthony D. Frisolone, FAPR, RDR, CRR, CRI  
17 Official Court Reporter  
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